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A
TREATISE

ON

Coppholds,
CUSTOMARY FREEHOLDS,
ANCIENT DEMESNE,
AND THE JURISDICTION OF
COURTS BARON AND COURTS LEET.

BY

JOHN SCRIVEN, ESQ.
OF THE INNER TEMPLE, BARRISTER AT LAW.

THE SECOND EDITION,
CONSIDERABLY ENLARGED AND IMPROVED.

WITH

APPENDIXES

CONTAINING RULES FOR HOLDING

CUSTOMARY COURTS,

(Particularly with Reference to Plaints in the Nature of Real Actions)

COURTS BARON AND COURTS LEET;

PRECEDENTS OF

COURT ROLLS, DEPUTATIONS, AND COPYHOLD ASSURANCES;

AND ALSO

EXTRACTS FROM THE RELATIVE ACTS OF PARLIAMENT.

VOL. II.

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A

Practical Treatise

or

COPYHOLD TENURE,

&c. &c. &c.

 PART THE SECOND.

CHAP. XV.

Of Customary Freeholds, (or Privileged Copyholds).

THE origin and peculiar character of this species of tenure, will, I think, be best illustrated, by selecting some few passages from the *Law Tracts* of Sir William Blackstone, title "*Considerations on*" "the question, whether tenants by copy of court roll, according to the custom of the manor, though not at the will of the lord, are freeholders qualified to vote in elections for knights of the shire." (1).

After shewing by an able argument, chiefly drawn from the authorities of Bracton, Fleta, and

(1) See stat. 31 G. 2: c. 14. in the shire to all persons holding the Appendix, denying the privilege of voting for knights of estates by *Copy of Court Roll*.

Britton, that estates of this nature are no other than what were well known to our ancient law, under the denomination of estates in *privileged villenage* or *villein socage*, and that they were not free lands at the common law; our learned Commentator thus proceeds (2).

“As the villan-sooman was distinguished from the pure villein, in that he could not be removed from his estate at the will of the lord; ‘*agleba*’ ‘*amoveri non debet, quumdiu velit et possit facere debitum servitium*,’ so, since this will of the lord, is by custom become merely nominal, the same nominal distinction is kept up between the common copyholders and this privileged sort; the words ‘at the will of the lord,’ being still preserved in the copies of the former, and totally omitted in those of the latter; which omission is indeed almost the only difference now remaining betwixt them; common copyholders having arrived (by a series of encroachment on their lords) at nearly the same estate of enfranchisement, which the privileged copyholders alone enjoyed by the antient law.”

“Farther to confirm what has been said, Lord Coke (cap. s. 82,) (giving an account of these tenures, which he calls copyholds of frank tenure) observes, that they ‘are most usual in antient demesne: though sometimes out of antient demesne we meet with the like sort of

“ copyholds; as in Northamptonshire there are
 “ tenants which hold by copy of court roll, and
 “ have no other evidence, and yet hold not at the
 “ will of the lord.’ And so Mr. Kitchen (*tit. copy.*)
 “ (8) says, ‘ I have seen in the county of North-
 “ ampton, copyholders of frank tenure; out of
 “ ancient demesne; and they have used a writ of
 “ right close, and have no other evidence but by
 “ copies, according to the custom of the manor;
 “ but their copies are not at the will of the lord.’
 “ And again, (*tit. court of ancient demesne*) (4),
 “ in surrenders of lands in ancient demesne of
 “ frank tenure, it is not used to say, to hold at
 “ the will of the lord, in these copies; but to hold
 “ according to the custom of the manor, by the
 “ services before due; and it is not said there, at
 “ the will of the lord.’ To these may be added
 “ Mr. West, who (*Symbolography*, S. 608.) first
 “ lays down the general definition of a copy-
 “ holder; ‘ he which is admitted tenant of any
 “ lands or tenements within a manor, that time
 “ out of memory of man have been demisable, and
 “ demised to such as will take the same, in fee,
 “ fee tail, for life, years, or at will, according to
 “ the custom of the said manor, by copy of court
 “ roll, of the same manor. . And therefore they be
 “ called tenants by copy of court roll, because
 “ they have no other writings or evidence, con-
 “ cerning such their lands and tenements, but only

(3) P. 159 of the Author's edit.

(4) P. 194 of the Author's edit.

the copies of the rolls of the courts of the manors, within which they lie.' And then (S. 605.) he distinguishes the present species of copyholds from others, thus: 'In some manors, the tenants have the lands granted unto them and their heirs, in fee, fee tail, or for life, or years, according to the custom of the manor; and not at the will of the lord according to the custom: in which case the rolls and copies ought to be made accordingly.' All which proves, that the omission of these words in its original, was neither fraudulent nor accidental; but is a badge well known to the law, as a kind of family distinction between such copyholds as are descended from pure, and such as are from privileged, villenage."

And after exemplifying his argument by a copy of a court roll in the old chartuary; or collection of ancient deeds and forms in conveyancing; Sir William Blackstone adds (5):—"This seems to be convincing evidence, that these tenures are of the same nature with Bracton's villanage; being chiefly found in antient demesne; the tenants not amenable to the county court; the lands not transferable but only by surrender; not capable of a recovery at common law (6), but

(5) P. 136.

(6) According to the case of *Olinde v. Taylor*, 1 Atk. 474. (citing *Baker v. Wass*, in Lord Mansfield's time,) a recovery may be suffered in the Court of

Common Pleas of customary freeholds, passing by surrender in a Borough Court, though not of copyhold lands. And see *Ante*, pt. 1. pa. 83-4.

"only by writ of right close, according to the
 "custom of the manor; and though held by copy
 "of court roll, yet not at the will of the lord.
 "These who imagine them to be of any other
 "species of tenure, would do well to inform us
 "what that tenure is, and to support their opi-
 "nion with authorities equally cogent. Taking
 "this then for proved, that the tenants in question
 "are of the nature of villan-socmen; it will next
 "be our business to shew, that these estates in
 "villan-socage are not comprised under the depo-
 "sition of *Free Lands and Tenements or Free-
 "hold*, within the meaning of the statutes of
 "Henry the Sixth. And here it will be necessary
 "to distinguish two senses of the word *frankte-
 "nement* or *freehold*; the ambiguity of which
 "expression hath occasioned the principal embar-
 "rassment, to such as have already considered
 "this question. By the word '*freehold*' then is
 "sometimes meant the *interest* or *estate* itself,
 "which the tenant holds in the land, sometimes
 "the *tenure* by which that estate is holden." (7.)

(7) The following authorities, establishing a distinction between a freehold interest and a freehold tenure, are cited by Sir W. Blackstone from Bracton and Coke. "*Libertatem tenementum est id, quod quis tenet ab eo et hereditibus suis; — item ad vitam tantum; vel eodem modo ad tempus indeterminatum. Item dicitur liberum te-*

nementum, ad differentiam ejus, quod est villenagium." Bract. l. 4. tr. 1. c. 28. s. 1.

"A freehold is taken in a double sense, either 'is named a freehold in respect of the state of the land, or in respect of the state of the law.' "In respect of the state of the land; so copyholders may be free-

Again, (8) "That such as have a freehold interest only in lands, and not a freehold tenure, are incapable of voting at elections; will appear by considering the consequences of the opposite doctrine, which would be the allowance of all copyholders, of the basest kind, to have equally votes. For they may likewise have a freehold interest, as Lord Coke has before observed; being generally either tenants for life or in fee; in which cases it is held, that they have *fee and freehold by custom*, (Kitch. tit. Cop.); or in other words, that the latter, viz. the copyholder in fee, hath a *customary estate of inheritance*, (9 Rep. 75. b.): terms, that in their import are at least equivalent to the *customary freehold*, which our courts of law have sometimes applied to the estate of villan-socmen."

And again (9): "It hath been before hinted, and must not be dissembled, that our law books hold, for any that hath any, according to the custom of the estate for his life, or any greater manor; and if he have fee, that estate, in any land whatsoever, he is seized in his demesne as of fee, according to the custom of the manor, and justify not that he may, in this sense, be termed a freeholder." "In respect of life, they have [no] freehold at the state of the law; and so it is opposed to copyholders, that what common law, but by the custom; land soever is not copyhold is so that copyholder hath fee and freehold by the custom; and not feehold." "Co. Cop. s. 15, 16, 17. by the common law, as it seems by this book, 21 Ed. 4. f. 96."

And Kitch. p. 157. says, "Tenant for life by copy shall say in his pleading, that he is seized in his demesne as of a freehold,

(8) P. 138.

(9) P. 144.

"and courts of law have frequently (especially
 "of late years) distinguished these estates, in
 "antient demesne and elsewhere, by the name of
 "*customary freeholds*; and have laid it down that
 "they cannot be copyholds, unless held at the
 "will of the lord, (Cro. Car. 229. 2 Vent. 143.
 "Clert. 432. Lord Raym. 1225.); and also, that
 "a freehold may be surrendered by custom in
 "court, without the will of the lord; and that the
 "alienes shall not be tenant at will, but shall have
 "the inheritance. (Fitz. Abr. tit. Corone, 210.
 "Custom, 12. Bro. Abr. tit. Custom, 2, 17.
 "Tenant per Copie, 22. 9 Rep. 76. Co. Litt. 59. b.
 "1 Roll. Abr. 562).

"But in all these cases the terms 'freehold and
 " 'freeholder,' are put in opposition to 'common
 " 'copyhold and copyholder,' to *the mere copyholder*,
 "as Brook expresses it. (Ten. per Copie, 22.), or
 "such as are sprung from the pure villenage of
 "our antient tenures. For it would be absurd to
 "say that lands, holden by copy, are not copyholds
 "in *any* sense. The truth is, that these lands are
 "of such an amphibious nature, that, when com-
 "pared with mere copyholds, they may with suf-
 "ficient propriety be called freeholds; and, when
 "compared with absolute freeholds, they may with
 "equal, or greater propriety, be denominated
 "copyholds. We do not contend that they are
 "copyholds of base tenure, subject to *all* the ser-
 "vile badges of pure villenage; but copyholds of
 "a privileged tenure, retaining some badges of

servility and not others; or rather (negatively) that they are not, purely and absolutely, freeholds. Whereas the question in all the adjudged cases (above cited) has been, whether copyhold or not; and it has been very justly determined that this species of lands is not common copyhold; but it does not therefore follow that it is purely and simply freehold; being on the contrary usually distinguished into a third intermediate state, under the mixed and complicated denominations of customary freehold, free copyhold, or as Lord Coke expresses it, as (Cop. 32); copyhold of frank tenure.

It perhaps may be also objected, that Lord Coke (in the passage just cited,) declares, that in these copyholds of frank tenure, the freehold is in the tenant and not in the lord (10). But this word 'freehold' must there be understood to denote the interest, and not the tenure of the land (11). And this depends upon a nicely in the modern law, derived from a very substantial and solid reason in the old law. When lands were in fact held in pure villenage, the te-

(10) It is not so, the freehold is in the lord, as we shall presently see, but there is much dicta for Lord Coke's position. *See* Co. Litt. 49. a. N. 6. 33. 59. b. N. 1. *Hughes v. Harry*, Cro. Car. 229. *Rogers v. Bradley*, 2 Vent. 143. *Gale v. Noble*, Carth. 433. *Crowther v. Oldfield*, Lord Raym.

(11) *See* 2 Co. Inst. 364. S. C. 6 Mod. 20. 2 Lutw. 1171. *Cockcroft v. Smith*, 11 Mod. 53. *Henry v. Grille*, Amb. 299; and *see* 6 East 84. in *Robt. Goshelly v. Vernon & Vyse*, S. C. 1 Smith, 328.

(11) Ante (n. 7).

(1) next, was really tenant at the lord's will, and
 "therefore the law did not allow him to have the
 "freehold of the land; but declared it to remain in
 "the lord, for tenant at will, with hardly any in-
 "terest at all, much less a freehold interest. After-
 "wards, when these villeins became modern copy-
 "holders, and had acquired by custom a sure and
 "indefeasible estate for life or in fee; but yet con-
 "tinued to be styled in their copies tenants at the
 "will of the lord; (the omission of which, in their
 "state of villenage, would have been a manifesta-
 "tion of their persons, *Mim. c. 12. s. 28. Lit. s.*
 "204, 205-6.) the law still supposed it *non ab-*
 "surdity to allow, that such as were thus nomi-
 "nally tenants at will could have any freehold in-
 "terest; and therefore continued, and still con-
 "tinues, to determine that the freehold of lands so
 "helden abides in the lord of the maner, and not
 "in the tenant, though he really holds to him, and
 "his heirs for ever, since he is also said to hold at
 "another's will. But; as to these copyholders of
 "free or privileged tenure, the case is otherwise.
 "They do not, nor ever did, hold at the lord's
 "will; either in fact, or nominally. There is
 "therefore no absurdity in allowing them capable
 "of enjoying a freehold interest; and on that ac-
 "count the law doth not suppose the freehold of
 "these lands to rest in the lord of whom they are
 "helden, but in the tenants themselves (12).

(12) This, as I have before no-
 ticed, is an erroneous supposition, *sup. (n. 10). et vide post.*

Bracton indeed makes a distinction (l. 2. c. 8. s. 2.) between *antient villan-socage*, who are born within antient domains, and such as are *adventitious*, who hold by compact and convention with the lord; apprehending that, though the latter may have a freehold interest, the former cannot. Compact and the consent of the lord may make the latter's estate a freehold; and again, in the person of one it shall be freehold, in the person of another villenage. And yet, granting their *tenures* to be freehold, it does not follow that their *tenure* is free; for their services, though certain, were not free but villan services; and therefore Bracton in the same section declares, that although the service be certain from a villan socage, yet the tenant shall not therefore have a freehold.

2. A second argument to shew that these *tenures* in villan-socage are not free *tenures*, will arise from their method of transfer or alienation, which was before remarked; namely, by surrender into the hands of the lord, and not by the usual conveyances by deed at the common law. Of these, feoffment with livery of seisin is still the principal, and was the only original conveyance by which a freehold could pass, till the statute of uses in the reign of Henry the Eighth.

And after adducing as a third ground of argument, that tenants in villan-socage are not free tenants, their inability to sue or be sued for their

lands, or of course to levy a fine or suffer a recovery in the King's courts of common law (13); but only in the court baron of the lord, by the peculiar writ of right topos (14); the learned author further observes (15):—"A fourth argument to prove that this tenure cannot be a free tenure, is this: that though the lands be not held at the will of the lord, and therefore the tenant cannot, nor ever could, be ousted at the lord's pleasure, as was formerly the case in common copyholds; yet still the lands are liable to forfeiture, and the tenant may be ousted by his own default, for the non-payment and non-performance of his rents and services: which no free tenant, *per liberum servicium*, could be by the common law. For the writ of *cessavit* (by which lands may now be recovered against a freeholder, for such default for two years together,) was first given by the statute of Gloucester, 6 Ed. 1. before which the lords had no remedy, but that of distress, for abstraction of freehold services; and at present, this writ of *cessavit* may be defeated, even pending the suit, by tender of amends to the lord. But it is the very condition of the tenure, in

(13) *Ant. p. 60.* Note: 7. A freeholder (14) *Ant. p. 60.* Copy-
 "held or recovery had of lands, holders in ancient demesne can-
 "in the King's court proves them not maintain a Writ of Right
 "to be frank-fee." Old Nat. Close. Post tit. "Ancient De-
 "Brev. tit. *De recto clauso* *medietate*." *Ant. p. 60.*

“question, that the lands be holden only so long
 “as the stipulated service is performed; ‘*quantum*
 “‘*valent et possint facere debitum servitium, et sol-*
 “‘*vere debitis pensiones,*’ as is the doctrine of
 “Bacon, Britton, and the rest, above cited. So
 “too the lord may seize their lands for alienation
 “contrary to the custom; (Bro. Abr. tit. Custom,
 “17;) and it is not improbable that he has likewise
 “the power of seising, if the heir comes not in to
 “be admitted in court at the death of the ancestor;
 “and for other causes, according to the peculiar
 “customs of each respective manor (16). Now it
 “is impossible that tenants thus dependant on
 “their lords, who may by law take the advantage
 “of sudden forfeitures, and destroy their estates,
 “can or ever could be ranked in the same class
 “with absolute freeholders, whose estates are not
 “liable to be defeated upon any such servile con-
 “ditions.”

And having relied, as a fifth ground of argument
 against these tenants being freeholders, on the cir-
 cumstance of their not being members of the
 county court, wherein all elections by freeholders
 are directed to be made, and on the position that
 such tenants were not contributory to the wages
 of the knights of the shire, which were formerly
 raised by their constituents to defray their expenses

(16) It would seem to be doubt-
 ful, whether in case of waste on
 land of this tenure, when not held
 at the will of the lord, although

held by copy of court roll, the
 lord could seize for a forfeiture, as
 in ordinary copyholds. Vide *Gale*
v. Noble, Carth. 492.

in parliament, our able commentator thus concludes (17):—" 6. The last argument that shall be offered upon this head is a very concise one, and is this; that, however the lawyers may at times have denominated these tenures a sort of base species of freehold, in contradistinction to mere copyholds, yet the law in the main regards them as being properly *copyhold*, and not *freehold* tenures; else they could not have subsisted to this day. For they must otherwise have been involved in the general fate of the rest of our ancient tenures, when by the statute of 12 Car. 2. c. 24. they all were abolished and reduced to free and common socage;—except only tenures in *frankalmoign* (18), and tenures by copy of court roll (19). Free and common socage these tenures cannot be; their surrenders, and admissions, their frequent fines for alienation, and peculiar paths of descent, (from which two last, as not being their universal properties, no argument hath been hitherto drawn,) their forfeitures, recoveries, and privileges, (still regulated by particular custom in derogation of the common law,) most clearly evince the contrary. Nor will it

(17) P. 159.

(18) The tenure by which all ecclesiastical persons and corporations, and lay impropriators, now hold their lands and tythes, and who even as to such tythes have a freehold interest, though issuing out of copyhold land, being a dis-

inct inheritance. See stat. 16 & 17 Car. 2. c. 1. 10 Ann. c. 23. 1 Bl. Tr. p. 115, 116, 117. Co. Litt. 100. b. n. 1.

(19) But part of the honorary services in *grand serjeanty* are also retained by the statute of 12 Car. 2. Co. Litt. 106. a. n. 1.

"be pretended that the yare of the nature of *freehold*. There remains therefore no other choice; tenures by copy of court roll they must be. This is their indelible character: it is to this they owe their present existence, and survival of other tenures. The statute has reduced the manner of lay *freeholds* to one and the same level, of free and common socage: but *copyholds* remain as they were, as various, as singular, and as service in their tenure as ever. These tenures therefore not being free and common socage, must necessarily remain *copyholds*, as entirely as in the time of Bracton; of a superior order, indeed, and distinguished by some advantages (formerly real, now nominal only,) over the baser sort; but still far short of the dignity, the immunities, and the independence of that *freehold* tenure, which for more than three hundred years has constituted an elector of knights of the shire to serve in the *English Parliament*."

The above perspicuous, classical, and highly interesting definition of the tenure now under our consideration, might, I think, be allowed to render it unnecessary for me to do more, than briefly notice two or three recent cases, fully establishing that the freehold is in the lord in *privileged*, as well as in *ordinary*, copyholds; and whereby all material distinction between them, would seem, to be abolished (20).

(20) The reader is reminded, from dower, of a trust estate, that a wife is equally excluded privileged copyholder or customary.

It may be proper, however, (with reference to the immediate subject of the copious extracts I have given from the Law Tracts of Mr. Justice Blackstone,) to remark, that customary freeholders, although holding by copy of court roll, have been allowed to vote for knights of the shire (21), even since the statute of 31 Geo. 2. c. 14. (22); and when customary freeholders do not hold by copy of court roll, their right to vote has been considered as less doubtful (23). But as the statute of 18 Geo. 2. s. 18. has enacted, "that no person shall vote in any election [of a knight or knights of the shire to serve in parliament within that part of Great Britain called England, or the Principality of Wales], without having a freehold estate in the county for which he votes, of the clear yearly value of forty shillings, over and above all rents and charges payable out of or in respect of the same;" and since it has been determined, that the *freehold* of these estates is in the lord, even when they pass (as frequently is the case) by *dead* and admittance, and are not held at the will of the lord, I must agree with Mr. Serjeant Heywood, in supposing, "that these tenants have no right to vote at County Elections." (24).

I wish also to remind the reader, that there is a

freehold, as in ordinary copyholds. *Godwin v. Winsmore*, 2 Atk. 526. *Forder v. Wade*, 4 Bro. Ch. R. 521. *Ante*, pt. I. p. 90.

(21) Contest for Leicestershire,

1770. Heyw. C. 81.

(22) *Ante*, p. 625, n. 1.

(23) Gloucestershire case. Heyw. C. 82. Male, 134, 285. Rogers, 160. n.

(24) Heyw. C. 85.

difference in the mode of pleading between pure copyholds, and those of a privileged nature (denominated Customary Freeholds) (25), arising principally out of the circumstance of the former being held, not only *secundum consuetudinem manerii*, but also *ad voluntatem domini*, whereas the latter are held according to the custom of the manor, but not at the lord's will (26). With this exception, however (27), there would appear to be no grounds of distinction between ordinary and privileged copyholds, when the latter are held by *copy of court roll*, and pass by *surrender* and *admittance* (28), although they be not held at the will of the lord (29). But if the case of

(25) *Ante*, pt. 1. pa. 578-9. *Vide* also *Burrell v. Dodd*, 3 Bos. & Pul. 378. *Leigh v. Williamson*, 9 Wentw. 123.

(26) In *Stephenson v. Hill*, 3 Burr. 1278, which was an action on the statute of 2 E. 6. c. 13, for the payment of tithes of corn and grain, and wherein the question was, whether the defendant could set up any prescription, which would by virtue of the statute of 31 H. 8. exempt him from payment of tithe, or (as Lord Mansfield put it), whether customary freeholders can in point of law prescribe in *non decimando*, Lord Mansfield and Mr. Justice Denison said, it was a settled point that the freehold is in the lord; and Lord Mansfield added, "This is rather stronger than the

"case of copyholds: for copy-holders had acquired a permanent estate in their lands before these persons had done so."

(27) And see as to the writ of *Right Close*, and of *Monstraverunt*, *post tit. 'Ancient Demane,'* n. 11.

(28) In many manors customary estates pass by deed or surrender, but the custom sometimes requires that the grantee should be admitted in the life time of the grantor, which was held to be a good custom in *Penn & Mariott*, Willes 436. *Ante*, pt. 1. pa. 38. And see *Perryman's case*, 5 Co. 84.

(29) The court of B. R. held in *Dec & Danvers*, 7 East, 200, that a right of entry in customary freeholds, passing by *surrender* and *admittance*, but not held at the will of the lord, is not tolled by descent.

Hussey v. Grills (30), be considered an authority, a devise of an equitable interest in customary freeholds, must be attested according to the statute of frauds. And in another case (31), the court would appear to have felt a distinction, as to the relevancy of that statute, between a devise of customary lands passing by *deed* and admittance, and a devise of the like lands passing by *surrender* and admittance. But as it is now fully settled, that a customary freeholder has no *freehold* interest, in the strict legal sense of that word, even when the estate passes by *deed* and admittance, the court must have been influenced in the above case of *Hussey & Grills* (supposing that case to have been rightly decided), by the circumstance of the will alone being operative in a devise of customary freeholds, passing by *deed* and admittance, whereas the will is to be deemed declaratory only of the uses of the surrender, when lands of that tenure pass by *surrender* and admittance, the same as in a devise of ordinary copyholds. I do not discover any case in which the question has arisen, whether there may be a general occupant of customary freehold lands, but as an occupancy is for supplying a freehold (32), and as the freehold remains in the land in *privileged* as well as in *ordinary* copyholds, the former would seem, with reference to the law of occupancy, to stand on the

(30) Amb. 209.

(31) *Doe v. Danvers*, 7 East. 299. *Ante*, pt. I. pa. 323. n. 393.(32) *Per* Holt, C. J. in *Smayle v. Penhallow*, 1 Salk. 189.

same footing as the latter, and to be subject to special, but not to general occupancy (33).

I have been equally unsuccessful in my endeavours to discover some judicial authority, or at least some respectable dicta, to prove the perfect accordance, or to establish a clear distinction, between privileged and ordinary copyholds, with regard to the operation of the writ of *Elegit*, and from which the latter are clearly exempt (34). The chief inducement to the decision that ordinary copyholds are not included in the statute of 13 Ed. 1. c. 18, appears to have been, the possible prejudice which the lord might sustain by the introduction of a new tenant, without his consent (35); and this principle would seem to apply equally to customary freeholds (or privileged copyholds), even when not held at the will of the lord, as the lord's assent to the change of tenancy, is implied in the admittance, which, (however unsubstantial the act may be considered at the present day,) is, I believe, an obligation invariably imposed upon the transmission of customary freeholds, although passing by deed or other act of assurance, not applicable to ordinary copyholds.

It may also be difficult to establish a distinction between privileged and ordinary copyholds, in the construction of the act of 13 Ed. 1. of *elegit*, consistent with the rule, that the freehold is never

(33) *Ante*, pt. 1. pa. 61, 106.

(35) *Ante*, pt. 1. pa. 97.

(34) *Ante*, pt. 1. pa. 60, 103.

taken out of the lord, in lands of the one tenure or the other, and which would seem to exclude the sheriff from any jurisdiction over customary freeholds, equally as in the case of ordinary copyholds (36).

But the necessity of an admittance by the lord of the manor, in order to perfect the conveyance of customary freeholds, and the absence of any actual freehold interest in the tenant, would appear to be the only grounds favorable to the opinion, that lands of customary freehold tenure, passing by deed and not held at the will of the lord, are not affected by an extent:—and the exemption is clearly not to be maintained on the ground of any right, which tenants of such lands may have, to implead and be impleaded in the court of the lord of the manor, *exclusively*; for the sheriff upon an *elegit*, delivers only a *legal* and not an *actual* possession (37); and to obtain an actual possession the plaintiff must proceed by ejectment. A further argument to be urged against the latter ground of exemption, (and which may also be urged against the supposition of any such privilege resulting from the freehold interest never having been taken out of the lord) is, that lands of the tenure of ancient

(36) The case of an ejectment is an exception to this rule, but it is to be recollected that an ejectment is, in principle, an action of trespass, founded on a common law title; and also that the party

bringing the ejectment, must first procure admittance to the estate in question, and which he could enforce by shewing a colorable right.

(37) Saunders 69 n. 3, 2 Cru. Dig. 73.

demesne are extendible, although ancient demesne is a good plea, where the freehold is in question (38); for a tenant by *elegit* has but a chattel interest (39); and by this execution, neither the freehold, nor the possession, is removed (40). It must not be forgotten, however, that although the *actual* possession is not removed by the sheriff's entry, and delivery of possession, under an *elegit*, yet that the *legal* possession so acquired, lays the foundation of an ejectment to recover the actual possession; and also that tenants by *elegit*, have the same remedy by assise, as freeholders are intitled to (41).

I shall now proceed to notice the cases I have before adverted to, as fully deciding, that the freehold is vested in the lord, and not in the tenant, in all customary freeholds, whether passing by surrender or by deed.

We have already seen that this was considered as a settled point by Lord Mansfield and Mr. Justice Denison, in the case of *Stephenson v. Hill* (42). In *Doe d. Reay v. Huntington and others* (43), the lord by his deed, dated subsequently to the statute of *quia emptores*, 18 Ed. 1. granted

(38) Post tit. "Ancient Demesne."

(39) Co. Litt. 42. a.

(40) *Ib.* *Coke v. Barnsley*, 1 Brownl. 234.

(41) 2 Inst. 396. Note, the stat. of Wratm. 2 c. 18, gives such tenants a writ of *Novel Dis-*

seisin if ejected, and afterwards a writ of *Re-disseisin*. *Ib.* 394-6.

F. N. B. 189. I. And see Co. Litt.

154 a; and n. 11. *ib.*

(42) 3 Burr. 1278. *Ante*, p. 640, n. 26.

(43) 4 East, 271.

and confirmed to the tenant his customary or tenant right estate, (not held at the will of the lord, and which *passed by deed and admittance*,) freed and discharged of all rents and services, (*excepting a rent of one penny yearly, and suit of court with the services incident thereto*, and all royalties, escheats, &c. consistent with the grant,) and which estate before was descendible different from the rule of common law, and was not deviseable (44): and Lord Ellenborough, in delivering the opinion of the Court of King's Bench upon a case reserved at the trial, in which the questions were, under what class of tenure the estate was ranged before the above grant, and secondly, the effect of that deed as it respected the tenant's right to devise the estate, held, that these customary tenant-right estates are not freehold, but in effect fall within the same consideration as copyholds, *and that the freehold is in the lord*. His lordship ob-

(44) At the end of the form of the pleadings in *Leigh v. Williamson*, (in trespass), 9 Westw. 129. (in which the land was stated to be of customary freehold tenure, descendible from ancestor to heir, and deviseable by custom), there is the following note. "The books are very barren on this species of tenure, but it certainly arose in the northern coast, [coast] near Scotland, for the defence of the borders; therefore in its creation unlikely even to be descendible,

much less deviseable; but the descent is now generally established, and perhaps the deviseability also in this manor: and I am informed by a gentleman of the north, that many of these estates, to this day, are not deviseable, at least not without leave of the lord, and seemingly the defendant relies upon this. If the license of the lord is necessary, it should be stated in the replication.

A. Dawson."

served, that by the deed of confirmation, the tenement had become frank fee *i. e.* holden in free and common socage, and deviseable by the statute of wills: that the words "freed, &c." amounted to a release of the services, &c. not excepted, and that the case bore a strong analogy to the tenure of ancient demesne; and to shew that the customary qualities were extinguished by the deed, his lordship cited, *Griffith v. Clarke*, Moor, 143, which was the case of a release after the statute of *quia emptores*, "*de omnibus servitiis et consuetudinibus, salvo servitiis infra scriptis, viz. pro una virgata terre 2. s. rent sect curie et relevio*," and the release was *de uno messuagio et una virgata terre*; and the court held the custom of ancient demesne extinguished by the release, but that the rent, suit of court, and relief continued by the saving, as the remnant of the ancient seignior. Lord Ellenborough also ruled, that the immediate customs of the land in question had become extinguished, and the land of course deviseable, the same as any other socage land, under the statute of wills, and consequently that the defendants, who were devisees, were intitled to it under the devise made to them.

Another case of peculiar interest on this subject is *Doe on the demise of Cook and Wife v. Danvers* (45). The estate appeared, by a case reserved.

(45) 7 East, 299. See note to *Carey v. Askew*, in Eden's Ed. of Brown's Ch. Rep. referred to *post*, p. 649. (n. 49).

at the trial, of ejectment, for the opinion of the Court of King's Bench, to be holden of the manor of Stebunheath, otherwise Stepney, in Middlessex, by copy of court roll, (but not *ad voluntatem domini*,) and to pass by *surrender* and admittance; and to have been leased under a previous license from the lord; and it also appeared to have been surrendered by the late owner, to the uses of her will. And the court ruled, that it being so circumstanced, whether held *at the will of the lord* or not, *the freehold was in the lord* and not in the tenant, and that with respect to all the questions arising in the case, it was to be taken and considered as copyhold.

The court had entertained a doubt how far the will could be considered a will in writing under the terms of the surrender, and whether under the 7th and 9th sections of the statute of frauds, the will must not be signed by the party, as thrown out by Lord Kenyon in *Doe d. Tempest v. Dancer* (1796), and according to what is reported to have been said by Lord Hardwicke, in *Tufnell & Page*, "that when such will was in writing, and signed "by the party, that was sufficient." But they now expressed themselves satisfied, that a will to direct the uses of a surrender of a copyhold or of a customary estate *passing by surrender*, was not within the statute of frauds, and need not be signed, unless such signature be required by the terms of the surrender to the uses of the will; and added, that although they thought it would

have been the sounder construction to have holden, that copyholds were comprised in the general words of the 5th and 6th sections of the act, "all devises and bequests of any lands or tenements;" yet it was a settled point, that the lands pass by the surrender and will taken together, as if the devisee's name was inserted in the surrender, and that they do not pass by the will: that the 7th section, requiring declarations or mentions of trusts of land to be in writing, signed by the party enabled to declare the trust, or by his will; and the 9th section requiring all grants and assignments of trusts to be also in writing, signed by the party granting or assigning, or by such last will or devise, did not extend to surrenders of copyhold or customary estates, but referred only to such will as the statute recognized, viz. a will attested by three or four witnesses,—a will of such lands not being a creation or declaration,—or a grant or assignment of a trust (46). And as to the question which had arisen, whether the will stated in the case was to be considered a will in writing, the court referring to 1 And. 34. 3 Leon. 79. 2 Keb. 128. *Carey & Askew*, 2 Bro. Rep. and a note to *Wagstaff v. Wagstaff*, 2 P. W. 259 a (47), also ruled, that the instrument in question, which was the written instructions for a will disposing of the above customary estate to the lessor of the plaintiff, and which had been pro-

(46) *Ante*, pt. 1, pa. 105.(47) *Ante*, pt. 1, pa. 801, *et seq.*

nounced as the will of the testator by the prerogative court, was a will in writing within the terms of the surrender; and judgment was therefore given for the plaintiff.

In concluding my observations on the properties of customary freehold tenure; it may be well to apprise the reader, that the Court of Common Pleas, in the case of *Burrell v. Dodd* (48), decided that customary or tenant right estates, are not within the statutes of partition, and, consequently, that it was a sufficient objection to the plaintiff's obtaining judgment under a writ *de partitione faciendâ*, that the land, upon the face of the plea, appeared not to be *freehold*, properly so called: This case may therefore be added to the several other authorities fixing the freehold interest in the lord, in *customary freehold lands*, whether passing by *surrender* or by *deed* (49).

I have had frequent occasion in the course of the present chapter to speak of tenants in ANCIENT DEMESNE; and I purpose now to enter on a brief consideration of the peculiar nature and properties of that tenure.

(48) 3 Bos. & Pal. 378:

(49) See the note to *Carey v. Askew*, in Eden's Ed. of Brown's Ch. Rep. 2d. vol. p. 59. Mr. Eden there mentions that this doctrine (as he was informed) had been discussed, as applying to certain customary estates within the manors of the Bishop of Durham, but that the question had not called

for judicial determination. *Vide* also 1 Show. 287. 2 Sir W. Bl. 1116. *Brown v. Rawlins*, 7 East, 409. S. C. (*Bourne & Rawlins*), 3 Smith, 408. *Roe & Vernon*, 5 East, 51. And see further as to *customary freeholds*, ante, pt. 1, pp. 189-4. (tit. 'SURRENDER'); 579 (tit. 'PLEADING'); 596 (tit. 'MANDAMUS').

CHAP. XVI.

OF ANCIENT DEMESNE.

It may be proper to premise, that the *Court of Ancient Demesne*, is a Court Baron, and not a Court of Record (1); a writ of error, therefore, does not lie in it, but the tenant or demandant may have a writ of false judgment (2).

The *tenure of Ancient Demesne* is confined to such lands as were held in socage of manors belonging to the Crown in the reign of Edward the Confessor (3), and in the reign of William the Conqueror (4):—and whenever a question arises as to the particular lands being *ancient demesne*, it is to be decided by the production of Domesday-book (5); wherein the lands which were in

(1) Kitch. 187, cites 9 Ed. 4. 43. 3 H. 4. 26. *Ib.* 190. 4 Inst. 269. Comy. 94, and 1 Salk. 340, in *Hunt v. Bourne* (or *Burn*). And the suitors are the judges of the court; Kitch. 190, (cites 34 H. 6. 38; 12 H. 4. 17; 3 H. 4. 16; 6 H. 4. 2). 4 Inst. 269. *Jentleman's case*, 6 Co. 11 b.

(2) F. N. B. 12. Kitch. 187, 190. *Jentleman's case*, *sup.*

(3) F. N. B. 14. D. Kitch. 192.

(4) 2 Inst. 542. 4 Inst. 269.

Lex. Man. 26-7. *Hunt v. Burn*, 1 Salk. 57. S. C. Holt, 60. F. N. B. 14 D.

(5) 9 Co. 31. a. Kitch. 192, cites 49 E. 3. 23.; and also a trial, 7 H. 6. 34, in which it was certified by Domesday-book, that London was not ancient demesne: (N. B. The appendix to the second General Report from the Commissioners on Public Records, reprinted 1819, p. 467, cites for this 37 H. 6. 27. *Vide*

the possession of King Edward, are called *terra Regis Edwardi*, and those which were in the possession of William the Conqueror, are called *terra Regis*.

Domesday-book (6), which about fifty years

2 Leo. 191.) *Saunders v. Welch*, cited 1 Salk. 57. Gilb. Ev. 69. Lex Man. 28. *Doe d. Rust v. Roe*, 2 Burr. 1048. But whether parcel or not of a manor which is ancient demesne, is to be tried *per pais*. Kitch. 192-3, cites 12 Ass. 18. 22 Ass. 45. *Hunt v. Burn*, *sup.* *Hopkins v. Pace*, 1 Sho. 271 Ca. 168. S. C. Comb. 183. 9 Co. 31. a. Br. Trials pl. 120.

(6) The better opinion seems to be, that this book was compiled upon the introduction, or rather on the complete establishment, of feudal tenure in England by William the Conqueror, for the purposes of military defence; and, as Sir Martin Wright supposes, (Ten. 56), "in order to discover the quantity of everyman's fee, and to fix his homage." Sir Wm. Blackstone observes, "We learn from the Saxon Chronicle (A. D. 1085), that in the 19th year of King William's reign, an invasion was apprehended from Denmark; and the military constitution of the Saxons being then laid aside, and no other intro-

duced in its stead, the kingdom was wholly defenceless; which occasioned the King to bring over a large army of Normans and Bretons, who were quartered upon every landholder, and greatly oppressed the people. This apparent weakness, together with the grievances occasioned by a foreign force, might co-operate with the king's remonstrances, and the better incline the nobility to listen to his proposals for putting them in a posture of defence. For as soon as the danger was over, the King held a great council to inquire into the state of the nation; the immediate consequence of which was the compiling of the great survey, called Domesday-book, which was finished in the next year; and in the latter end of that very year the King was attended by all his nobility at Sarum; where all the principal landholders submitted their lands to the yoke of military tenure, became the King's vassals, and did homage and fealty to his person." 2 vol. Com. 48. And adds, (*Ib.* p. 51.) "In conse-

ago was reprinted by government, under an address of the House of Lords (7), records the survey made by command of William the Conqueror, of all the manors throughout England, except those in the northern counties, viz. Northumberland, Cumberland, Westmoreland, and Durham (8); and part of Lancashire.

quence of this change, it became a fundamental maxim and necessary principle (though in reality a mere fiction) of our English tenures, 'that the King is the universal lord and original proprietor of all the lands in his kingdom: and that no man doth or can possess any part of it, but what has mediately or immediately been derived as a gift from him, to be held upon feudal services.'

The reader, however, is reminded, that most of our ancient text writers are agreed, that military services and feuds may be traced to the Saxon polity, but that the feudal law was completely established in about the middle of the reign of William the Conqueror. *Vide Harg. & Butl. notes to Co. Litt. 64. a. & b. 65. a., 191. a.*

(7) And is said to be executed with the most scrupulous fidelity and correctness: See first Report of the House of Commons on Pub-

lic Records, Appendix A. 1. a. 1 Phill. on Ev. 321.

(8) A valuable supplement to Domesday-book has also lately been reprinted, entitled the Boldon-book, or Survey of the Palatinate of Durham. In the appendix to the second general Report from the Commissioners on Public Records, (p. 475) it is stated, that Hugh Pudsey, called also, De Puteaco, De Pusar, and De Pusaz, nephew to Stephen, King of England, caused this survey to be made in 1183; and that it probably had its name from Boldon, a village and parish near Sunderland, in the same diocese, where either it was compiled, or according to the census of whose inhabitants, the other manors, &c. in that bishopric were regulated. This useful work adds, "Of the motives or reasons which led to this compilation, we have no record; but Bishop Pudsey affected the

This survey is supposed by some ancient writers, to have been undertaken about the year 1081, and to have been finished in 1086 (9); but the exact time of its commencement is differently stated by historians, some affirming that it was begun in 1085, and finished in about a year (10).

Domesday-book has been sometimes called *Liber de Wintonia*, or *Rotulus Wintoniæ*, which is considered to be evidence of the first place of its deposit. It appears to have been removed to Westminster soon after its completion, and kept under seal in the Exchequer, till in 1696, it was deposited in the chapter house.

" state of a sovereign in his own
 " palatinate; in which there were
 " many royal rights, which had
 " been enjoyed by its prelates
 " long before the conquest, and
 " were continued long after; several of which remain even to
 " the present day. And perhaps
 " it was in consequence of these
 " exclusive rights, that when
 " the general census, known by
 " the name of Domesday-book
 " was made, the Bishoprick of
 " Durham was passed by, as it
 " was found to contain no rights
 " which could be claimed by the
 " Monarch, without trenching on
 " those which had been possessed by its Bishops through a
 " long series of years."

This record, it seems is frequently

appealed to, and has been admitted as evidence in trials at law, on questions affecting the seigniorial rights of the See of Durham.

One copy of the Boldon-book is in the Bishop's auditor's office, Durham; another in the library of the Dean and Chapter in the same city; and a third among the manuscripts of Archbishop Laud, at Oxford.

(9) See *Lex Man.* 27. 4 Inst. 269.

(10) Baron Maseres, in the notes to his '*Excerpta ex Orderrico Vitali*,' p. 259, represents the survey to have begun as early as 1071. See App. to 2nd Gen. Rep. from Commissrs. on Pub. Rec. p. 382, *et seq.*

Ancient writers are not agreed as to the derivation of the word '*Domesday*.' It has been affirmed (11), and with apparent probability, to be a corruption of *Dome-boc*, which was the appellation given to *Alfred's* register or code of Saxon laws; but the word '*domesday*' was frequently used, even so long back as the eleventh century, to denote a survey (12).

As there can be no appeal from *Domesday-book*, and no averment made against it (13), so it has not inappositely been called *liber judicarius* (14); and we have a further clue to the signification of the word '*Domesday*,' in Sir Edward Coke's 4th Inst. (15), who in adverting to its uncontrollable truth and verity, says, "*And therefore in that respect like the doome and judgement at Doomes-day.*"

Domesday-book was frequently appealed to in ancient times, as will be seen by consulting several of the authorities already referred to (16).

In the case of *Griffin v. Palmer* (17), the issue was whether the manor of Bowden in Northamptonshire were Ancient Domesne or not; and the

(11) See Bishop Kennett's *Paroch. Antiq.*

(12) See App. to second Gen. Report from Commissioners on Public Records, 381, 383-4.

(13) 4 Inst. 269.

(14) *Spelm. Gloss. v. Domesday*. And see 4 Inst. 269.

(15) P. 269. So Redborne, *Angl. Sacr. tom. i. p. 257*. "*Vocatus Domsday; et vocatur sic, quia nulli perit sicut nec magnus dies judicii.*"

(16) *Ante*, n. 5.

(17) 1 Brownl. 49. S. C. Hob. 188. Ca. 230. Lex Man. 36.

Court of Common Pleas awarded that the plaintiff '*habeat recordum libri de Domesday hic in Oct. Mich. &c.*' and on production of the book at the trial it appeared, that the manor of Bowden in Leicestershire was Ancient Demesne, but that Bowden in Northamptonshire was not.

The like issue was taken in ejectment for lands in Longhope in Gloucestershire, and at the trial Domesday-book was brought into court by an officer of the Exchequer, by which it appeared that *Hope* was Ancient Demesne, but there was no mention of *Longhope*, upon which the counsel for the defendant offered to prove that *Hope* and *Longhope* were one and the same place; but the court would not admit such proof, and held that the defendant should have pleaded that it was known as well by the one name as the other (18).

And unless the manor or land is mentioned under the title *terræ Regis*, or *terræ Regis Edwardi* (19), in Domesday-book, it will not be deemed Ancient Demesne, although the book itself should furnish evidence of a grant thereof from the Crown (20).

(18) *Holdy v. Hedges*, 1 Sid. 147. S. C. (*Holdage v. Hedges*) 1 Lev. 106. And see similar issues as to the manor of Sudbury in Suffolk, Dy. 250. b. 9 Co. 31. a; and the manor of Otterbury, *Saunders v. Welch*, cited 1

Salk. 57. *Vide* also, 1 Nels. Abr. 210. (A). 1 New Abr. 110. (A. Marg.)

(19) *Ante*, p. 651.

(20) Kitch. 192-3. *Saunders v. Welch. sup.*

There are three sorts of tenants in Ancient Demesne, one who hold their lands freely by the grant of the King; a second, who hold of a manor which is Ancient Demesne, *but not at the will of the lord*, and whose estates pass by surrender, or deed, and admittance, and denominated customary freeholders (21); and a third who hold of a manor, which is Ancient Demesne, by copy of court roll, *at the will of the lord*, and denominated copyholders of base tenure, which latter cannot maintain a writ of Right Close, or *Monstraverunt* (22), but are to sue by plaint in the lord's court (23).

Of the Privileges incident to this Tenure.

It should seem that by the terms of the original grants of land, of the tenure of ancient demesne, the grantees bound themselves to cultivate the King's demesnes for the sustenance of his household (24); and to supply provisions for the King's garrisons, and for the soldiers in other places, in time of war or rebellion (25); for which services

(21) And these, it is said, even when holding by copy of court roll, may have a *Monstraverunt*, and use a writ of Right Close, Kitch. pp. 158-9, 194. Co. Cop. s. 32. Tr. 58. ante, p. 627.

(22) Br. Abr. 'Ancient Demesne,' pl. 41. Kitch. 159. F. N. B. 14 D, 16 E. Co. Cop. s. 51. Tr. 118, 119; *Pymmock v. Hilder* Cro. Jac. 559. ante, p. 635.

(23) Ante, pt. 1. p. 541, &c.

(24) See 1 Leo. 232, in *Ward & Knight's* case. 2 Inst. 221, 542. 4 Inst. 209. Lex Man. 29, 81. 2 Sho. 16, in the *King v. Bettworth*. Hob. 48, in *Cox v. Barnely*.

(25) See the *Town of Leicester's* case, 2 Leo. 191. Lex Man. 29 n. *Ib.* 32-3.

certain privileges were secured to them, regarding both their persons and estates, for they appear to be excused (but in respect only of their lands held in ancient demesne) from serving on juries or inquests out of their manor or seignior (26); and from taxes and tallages granted by parliament, if not specially charged (27); and from payment of pontage and toll of passage (28). And this latter privilege extends as well to tenants who hold of a subject as of the king; and to tenants for life or years, or even at will (29). But the exemption from toll is only in respect of such things as arise or grow on the land, or as are

(26) F. N. B. 14 F. 4 Inst. 269. Br. Auncien Demesne, pl. 42. "Tenants of ancient demesne shall be exempt from the leet, view of frank-pledge, and from Sheriff's tourns," Br. Aunc. Dem. pl. 49, cites the Reg. fo. 181. And see F. N. B. 14. E. marg. But ancient demesne is no exemption from serving the office of high constable. *King v. Bettworth*, 2 Sho. 75. S. C. Anon. 1 Vent. 344.

(27) But I apprehend that all general acts of Parliament extend to ancient demesne lands, when the tenure is not prejudiced by the purview of such acts. See 1 And. 71. &c. 4 Inst. 270. Hob. 48. Com. Dig. Ancient Demesne (K). *Ante* pt. 1. pa. 97.

(28) Br. Aunc. Dem., pl. 43, 49. B. Priviledge, pl. 56. F. N. B. 14, 228. 2 Inst. 542. 4 Inst. 269.

Kitch. 194. Hob. 48, in *Cox v. Barnsly*. Ancient Demesne tenants were also exempt from contribution to the expences of knights in Parliament; see all the authorities referred to in this note: *Ante* p. 636. Heyw. Co. 82, [2d. ed.]

Tenants in ancient demesne, holding by copy of court roll, are excluded by 31 Geo. 2. c. 14. from the privilege of voting at elections. *Vide* Heyw. Co. 75, &c. Male [2d. ed.] 133, 285. *Ante* 638.

(29) F. N. B. 228 D. *Savery v. Smith*, 2 Lutw. 1146. 2 Leo. 191. 2 Vin. Abr. 481 (C). 1 Roll. Abr. 322 (C). And to the lord himself, F. N. B. 228 B. *Savery v. Smith*, sup. Br. Auncien Demesne, pl. 43: (If he be tenant also, 1 Roll. Abr. 322 D, cites 9 H. 6. 25. b). See the form of the writ of exemption from Toll, F. N. B. 228. A.

bought for manuring it, or for the necessary use of the tenant and his family, and does not extend to general merchandize (30); but this was formerly doubted (31).

Whether merchandize or not is to be shewn on the other side, so that the tenant may allege an exemption generally (32). He need not prescribe for the privilege, as it is incident to his estate, and it is sufficient to say that he is *tenant and inhabitant* within the manor of A., which is ancient demesne (33): And though safer to allege notice that he was tenant in ancient demesne, it does not seem to be necessary (34).

Tenants in ancient demesne are also to be impleaded in the lord's court only by a writ of right close, directed to the lord of the manor, commanding him to do the tenant who prosecutes this writ, what is right in his court (35); and if tenants in ancient demesne are otherwise impleaded, they may plead their tenure in abate-

(30) *Ward v. Knight*, Cro. Eliz. 227. S. C. 1 Leo. 292-3. 2 Inst. 221. 1 Roll. Abr. 321 (B). 2 Leo. 191.

(31) F. N. B. 228. A. & E. 1 Roll. Abr. 321 (B) pl. 2, 3.

(32) Lutw. 1146-7, in *Savery v. Smith*.

(33) *Ib.* In the above case of the Town of Leicester (2 Leo. 191), Shute, Just. was of opinion, "that an inhabitant within Ancient Demesne, although he be

not tenant, shall have the privileges."

(34) *Savery v. Smith*, *sup.*

(35) 2 Inst. 542. 4 Inst. 269. See the forms of this writ. Reg. f. 9. F. N. B. 11. A tenant in Ancient Demesne may also have a bill of fresh force in the court of Ancient Demesne, within forty days after disseisin, without any writ sued, Kitch. 188-9. F. N. B. 13 E. Br. Aunc. Dem. pl. 1, cites 26. H. 3. 4.

ment of the suit; but this, as we shall presently see, is only where the realty may come in question.

(Of the writ of Monstraverunt, &c.)

Should tenants in ancient demesne be distrained by their lords to perform other customs or services than they and their ancestors have usually performed, they may be relieved by the writ of *monstraverunt* (36), founded on a petition and ordinance of Parliament (37), and directed to the lord, commanding him not to distrain contrary to such ancient usage, upon which another writ of *monstraverunt* may be sued, directed to the sheriff, commanding him to cause justice to be done, if the lord be disobedient.

But the lord cannot be put to answer the attachment, before the court be certified by the exchequer, that the manor is ancient demesne, therefore the plaintiff in the *monstraverunt* should sue a special writ to the treasurer and chamberlain of the exchequer, to certify the same (38).

Yet it seems that the certificate lawfully coming into court by *certiorari* and *mittimus*, is conclusive, though there be no issue joined, whether frank fee or ancient demesne (39).

The sheriff may make resistance and rescous to

(36) See the forms of this writ, F. N. B. 14, 15.

40 Ed. 3. 44. F. N. B. 14 F.

(37) 18 Ed. 1. 27. It should seem that the tenants may have this writ without being distrained.

(38) F. N. B. 16 C. See this writ. *Id.*

(39) *Id.* n. a., cited 7 H. 6. 24. 39. E. 3. 9.

any distress by the lord; and in case of the lord's distraining again, the tenants may sue an attachment against the lord, returnable in the King's Bench or Common Pleas, and recover their damages (40). If the lord distress them pending the attachment, they may have a special attachment directing the sheriff to make deliverance (41).

The writ of *monstraverunt* may be sued generally, without shewing the names of the tenants, but in the attachment against the lord, the tenants suing it must be named (42), or at least the tenants distrained after the prohibition are named by their proper names, and the others by the general words *homines manerii* (43).

But if one of those named in the attachment will not sue, he may be severed, and the death or nonsuit of one will not prejudice his companions, although the count in the *monstraverunt* be joint (44).

And one tenant may sue the writ of attachment alone, by his proper name, and in the name of the other tenants by the above general words (45).

If frank tenants, and tenants by base tenure

(40) F. N. B. 15 B.

(41) F. N. B. 15 I.

(42) Plowd. 129. F. N. B. 15 D., F. And see 4 Inst. 269.

(43) F. N. B. 15 F. Those only who are specially named in the writ of attachment shall recover damages, F. N. B. 16 B.

(44) F. N. B. 15 G. 15 E.

For though the count be joint, the tenures are several, and so the torts and damages are several, 15. n. b. The plaintiffs in the attachment may count severally; And the day or place where the lord distrained need not be alleged in the count, F. N. B. 16 A.

(45) F. N. B. 15 H.

join in a *monstraverunt*, the writ shall abate only as to the latter (46).

Writ de non ponendis, &c. In case of being impannelled on any inquest, tenants in ancient demesne may have the writ *de non ponendis in assisis et juratis*, and if, in contempt of such writ, the sheriff will return them, they may have an attachment against him (47).

(Of the Writ of Right Close.)

This writ has been said to be peculiar to lands in ancient demesne (48), but the observation would seem to be unfounded (49). The writ is directed to the lord of the manor, or sometimes to the bailiff, and he that brings it, may make protestation to pursue it in nature of what writ he pleases; either in nature of a proper writ of right, or of an assise of *novel disseisin, cui in vita*, or any other real writ; and therefore it may be brought by tenant for life, in tail, or in dower (50).

The demandant in a writ of Right Close cannot

(46) F. N. B. 16 E, F.

(47) 1 Nels. Abr. 212 (C) pl. 1.

3 New Abr. 111 (B). pl. 2 marg.

(48) Booth's Real Actions, 116.

(49) The writ of right called *præcipe in capite*, and which lies where the lands are held of the king in capite, as of his crown, is close, F. N. B. 5 E, Reg. Brw.

4 b. Booth's Real Actions, 87-8.

The writ of Right Patent, indeed, when brought in the King's court, *quia dominus remisit curiam*, is also close, Booth's Real Actions, 87-8. And see *ante*, p. 627, tit. "Customary Freeholds."

(50) F. N. B. 11 F. Booth, 116.

remove the plea out of the lord's court for any cause (51). But the tenant may remove the same by *recordare* for several causes, as that the lands are frank-fee, and not ancient demesne (52); or that there be no suitors; or only one suitor (53); or from a just apprehension of partiality, as that the demandant is steward (54).

If the tenant for special cause remove the plea into the Common Pleas by *recordare*, although the plea be without writ, yet he cannot shew *new cause* to retain the plea in C. B.; but if the cause be general, as that the tenant claims to hold at common law, there the tenant may shew any special cause to prove the tenements frank-fee, as for instance, a confirmation by the lord (55).

If the demandant and tenant put themselves upon the grand assise (56), or the tenant plead a

(51) 34 H. 6. 35. 2 E. 3. 35. And see 3 H. 4. 14. 2 Vin. Abr. 495-6. pl. 9. marg. F. N. B. 13 B. *Ib.* n. a. 4 Inst. 269. But see 2 E. 3. 29.

(52) F. N. B. 13 B & C. Booth, 117. 4 Inst. 269. Com. Dig. Ancient Demesne (G 5). 2 Vin. Abr. 495-6. pl. 9.

(53) F. N. B. 13 C. 4 Inst. 270. So, it should seem, if there are four suitors only, Br. Cause a remover plea 35. F. N. B. 13 C. marg.

(54) Booth, 117. Rast. Ent.

242 b. The demandant being bailiff, does not seem to be a cause of removal. F. N. B. 13 B. (n. a), cites 11 H. 6. 10.

(55) F. N. B. 13 F. *Ib.* (n. a), cites 9 H. 6. 34-5. 21 E. 3. 32.

(56) But where in a writ of Right Close the plaintiff made protestation to sue in nature of a writ of right at common law, and the tenant joined the mise [or issue], upon the *mere right*, and put himself on the grand assise, the record was removed by an *affcedas ad curiam* into the court

foreign plea, or vouch a foreigner to warranty (57), then a *supersedeas* is to be granted out of Chancery to the lord of ancient demesne, or his bailiff (if the writ were so directed), to surcease; and on such foreign voucher the defendant should sue his writ of *warrantia chartæ* against the vouchee, returnable in the Common Pleas, and then he may have the *supersedeas* out of Chancery to surcease, until the plea be determined in C. B. (58).

And if the lord or bailiff proceed after such writ sued forth, the tenant may have an attachment against him to answer the contempt in the Common Pleas, to the King and to the party (59). So if the record in ancient demesne is removed by *recordare*, and the lord or bailiff proceed in the plea, the tenant may sue a *certiorari*, directed to the justices of the Common Pleas, to certify the tenor of the record into Chancery, and of the removal; and on the certificate into Chancery, the

of C. B., and it was held, that the tenant's putting himself upon the grand assise, was not a sufficient cause for removing the record, but that he should have a jury in the nature of the grand assise; and a *procedendo* was awarded. *Stafford's case*, Dy. 111 b. And see *Lex Man.* 41. *Rast. Ent.* 242. But see 1 H. 7. 29. Booth, 117. F. N. B. 13 H. (n. b).

(57) See as to voucher into the county by tenant in ancient de-

mesne, the vouchee having nothing to be summoned by within the seigniorie. Dy. 69 b. pl. 35. *Vide* also F. N. B. 13 G. (n. b).

(58) F. N. B. 13 G & H. Br. Aunc. Dem. pl. 35, cites 1 H. 7. 30. If the tenant plead *bastardy* &c., a *supersedeas* also goes to the lord to surcease, for the court of Ancient Demesne cannot write to the Bishop. Reg. 9. a. 1 Com. Dig. 354.

(59) F. N. B. 14 A.

tenant shall have an attachment, returnable in the Common Pleas, to answer to the King, and to the tenant who sued forth the *recordare* (60).

But if the plea of *warrantia chartæ* be discontinued in C. B. then the demandant may sue a writ out of Chancery, directed to the justices of C. B., to certify the King in Chancery if the plea of *warrantia chartæ* be pendent, or discontinued, so that if discontinued or determined, the court of Ancient Demesne may be directed to proceed in the plea (61).

We have already seen that a writ of error does not lie to reverse a judgment in a court of Ancient Demesne, but that the party may have a false judgment (62). Where it was assigned for error, that the writ of Right Close was directed to the bailiffs, when it appeared by the record that the plea was holden before the suitors, and also that twelve recognitors only were returned, instead of twenty-four, the judgment of the manor court was affirmed (63).

(60) F. N. B. 13 H.

(61) *Fb.* 14 A.

(62) *Ante*, p. 650. But as a copyholder cannot have a writ of Right Close, (*ante*, p. 652-3), if one recover against him in ancient demesne by writ of Right Close, he shall not have a writ of false judgment, nor assign this for error, for then he should be restored to a freehold which he never lost. 14 H.

4. 34. The recovery, however, it seems would be void, and might be avoided by plea, 1 H. 5. 12. F. N. B. 12 B. (n. b).

(63) *Abrahall v. Nurse*, 3 Leo. 63. S. C. Bendl. 279. In *Lex Man.* p. 41, the reason assigned for overruling the first exception is, that it should be intended that the bailiffs were likewise suitors.

(When Ancient Demesne is a good Plea, and of the general rules of Pleading as to lands of that Tenure).

In all cases where a recovery against the tenant in ancient demesne could make his land frank-fee, there *Ancient Demesne* is a good plea (64): it may therefore be pleaded in bar in assise, or *re-disseisin* (65), and all real actions (66).

Ancient Demesne is also a good plea wherever the interest of the land is bound, or the realty by intendment may come in debate; as in an ejectment (67); but if not so pleaded it will be too late after judgment to take advantage of the change of tenure (68); and, indeed, it should seem,

(64) 8 H. 6. 34. 1 Roll. Abr. 322. (E) pl. 1.

(65) 7 H. 6. 35. b. 1 Roll. Abr. 322, pl. 7. *Coke v. Barnsley*, 1 Brownl. 234. So in assise of rent out of land in ancient demesne, Dy. 8, pl. 14.; but see Br. Aunc. Dcm. pl. 3. *Id.* Priviledge, pl. 7. *Vide post*, p. 668-9, as to assise by tenant by *eligit*, and *stat. merchant*.

(66) 8 H. 6. 1. 1 Roll. Abr. 322 (E) pl. 2. 4 Inst. 270. It may be pleaded after a release of a default, upon the return of the Grand Cape, 8 H. 6. 1. 1 Roll. Abr. 324. (H) pl. 1. In *fermedon* tenant not allowed to plead *Ancient Demesne* after the view. Fitz. Abr. Aunc. Dem. pl. 12, cites Hill. 50. E. 3. 10. *Contra*

in *præcipe quod reddat*, Br. Aunc. Dem. pl. 10, cites 50. E. 3. 9. The prayee in aid shall not plead *Ancient Demesne*, because the tenant has affirmed the jurisdiction before by the aid prayer, Br. Aunc. Dem. pl. 15. 2 Vin. Abr. 488. (H) pl. 4.

(67) *Smith v. Arden*, Cro. Eliz. 826. S. C. 2 And. 178. S. C. (called *Alden's case*), 5 Co. 105. S. P. Hob. 47, in *Cox v. Barnsley*. 1 Bulst. 108. 2 Roll. Rep. 181. Comb. 40. 4 Inst. 270.

(68) Neither in such a case could the suitors of the manor court refuse to execute a writ *de procedendo ad executionem judicii*. *Cybon v. Bowyer*. Mo. 451.

that in ejectment, it must be pleaded within the first four days of the term (69), and that the plea must be with leave of the court (70), on an affidavit stating, that the lands are holden of a manor which is ancient demesne, that there is a court of ancient demesne regularly holden, and that the lessor of the plaintiff has a freehold interest (71). But the plea may be filed *de bene esse*, where the four days would expire before cause could be shewn and the plea pleaded (72).

(69) *Smith v. Roe*, Barnes, 331. Sir G. Co. 103. Prac. Reg. C. P. 2. *Holdfast v. Carlton*, Sir G. Co. 43. *Pease v. Badtittle*, Barnes, 336. *Bingham v. Barker*, cited Barnes, 187. *Doe & Thomas*, Barnes, 185. *Deighton d. Roberts & Wife v. Forster*, 2 H. Barnes, 156. *Denn d. Wroot v. Fenn*, 8 T. R. 474. But see as to country cause, *Doe & Robinson*, 2 Str. 1120. The plea of Ancient Demesne has been allowed after imparlance, *Marshall v. Allen*, Latch, 83. S. C. Palm. 406. S. C. Cro. Car. 9. S. C. cited Willes, 239. Dy. 210. b. pl. 27. *Ib.* 373. b. pl. 13. n. Com. Dig. Abatement (D 1.); yet see contra in Replevin, *Vincent v. Wallis*, Sty. 197. Vide also Het. 177. *Clarke v. Hampton*, 4 Jac. cited in *Marshall & Allen*, *sup.* Ante, pt. 1. pa. 580.

(70) Barnard. Rep. B. R. 7, 352, 365. Andr. 368. 1 Sir

W. Bl. 197. Tidd's Pr. 633.

(71) *Smith v. Roe*, *sup.* *Doe d. Rust v. Roe*, 2 Burr. 1046. *Hatch v. Cannon*, 3 Wils. 51. Tidd's Pr. 633. But formerly the affidavit was not thought necessary in ejectment. *Goodright v. Shuffell*, 2 Lord Raym. 1418, cites Earl Coningsby's case. An affidavit that the lands are reputed to be ancient demesne would seem to be sufficient, there being a probable cause shewn to plead it. *Doe d. Henant v. Thomas and others*, Barnes, 185.

Note also, it is said that land may be ancient demesne, though parcel of a manor which is not ancient demesne. 1 Roll. Abr. 321 (A) pl. 1, cites 30 E. 3. 12. And see 2 Leo. 191. But see *ante*, p. 630. 2 Burr. 1048. *Hopkins v. Pace*, 1 Sho. 271.

(72) *Doe d. Morton v. Roe*, 10 East, 523.

An affidavit to verify the fact of the land being ancient demesne, would seem to be necessary in all cases where the plea is to the jurisdiction of the court, and therefore in a plea of ancient demesne in formedon (73); yet it was formerly held that foreign pleas only, and not pleas to the jurisdiction, were to be sworn to (74). It should certainly seem that the plea of ancient demesne is good without a defence (75).

Ancient Demesne is likewise a good plea in Replevin (76); in a writ of Mesne or of Ward; in account against guardian in socage, or bailiff of a manor (77); in a writ of admeasurement of pasture (78); and in partition (79), the land being

(73) *Hatch v. Cannon*, *ubi sup.*
And see 1 P. W. 476. Anon.

(74) *Cholmondeley v. Broom*,
Carth. 402. S. C. 3 Salk. 173.
S. C. 5 Mod. 335. 12 Mod. 123.
Vin. Abr. 'Foreign Plea,' 1 Saund.
93, n. 1. 1 Chitty on Plead. 429.
And see *Goodtitle v. Rogers*, Bar-
nard, Rep. B. R. 7. 2 Vin. Abr.
503. pl. 27.

(75) *North v. Hoyle*, 3 Lev.
182. *Smith v. Frampton*. *Ib.*
405. *Farrers v. Miller*, 1 Sho.
386: But see S. C. (*Ferrer v.*
Miller), 1 Salk. 217, Carth. 221,
where Holt, C. J., said that the
plaintiff might have refused the
plea for want of a defence.

In gracie quod reddat ancient
demesne a good plea, without
traversing that it is frank-fee,

Br. Traverse *per* &c. pl. 185.

(76) 4 H. 6. 19. 7 H. 6. 35. b.
21 E. 3. 10, 51. 29 E. 3. 9.
30 E. 3. 12 b. 2 H. 7. 17. 21
E. 4. 3 a. 10 H. 7. 14. 2 Vin.
Abr. 482. pl. 5. Br. Aunc. Dem.
pl. 4, cites 40 E. 3. 4. 4 Inst.
270. *Alden's case*, 5 Co. 105 a.
Cox v. Barnsly, Hob. 47. *Owen's*
case, Ow. 24. Godb. 64, ca. 76.
Scroggs 123. F. N. B. 11 L. (n. a).
And even after a deliverance
made in replevin, 30 E. 3. 12 b.
1 Roll. Abr. 324 (H), pl. 2.

(77) 4 Inst. 270. *Alden's case*,
ante. Hob. 47.

(78) 8 H. 6. 34. Br. Aunc. Dem.
pl. 20, 37. 1 Roll. Abr. 322. pl. 8.

(79) *Grace v. Grace*, Tr. 19
Jac. 1 Roll. Abr. 322. pl. 10.
Pont v. Pont, Sir T. Raym. 249.

collaterally though not directly in question. It has been said to be a good plea also in assise by tenant by *elegit*, the statute giving an assise to such tenants, not extending to ancient demesne lands (80); but the case of *Smith v. Arden* (81) has fully decided that ancient demesne lands may be extended on an *elegit*, under the statute of 13 Ed. I., neither the freehold nor the possession being removed by such execution.

When Ancient Demesne is pleaded, it is essential to allege, that the lands are *held* of some manor which is ancient demesne, and not that they are *parcel* of such manor, for that would imply that they were part of the demesnes, and pleadable only at common law (82). And when lands are pleaded in a real action, as being frank-fee though held of a manor which is ancient demesne, it should seem that it is not sufficient for the demandant to

(80) Br. Aunc. Dem. pl. 33. *Ib.* Parliament & Statutes, pl. 81, cites 22 Ass. 45. And see 2 Vis. Abr. Anc. Demeane (E) pl. 15. marg.

(81) Cro. Eliz. 826. 5 Co. 105. 2 And. 178. And see *Cox* (or *Coke*) v. *Barnely*, Hob. 47. S. C. 3 Brownl. 234. *Martin v. Wilks*, Mo. 311. Hut. 117. *Ante*, p. 453-4, tit. 'Customary Freeholds.'

(82) Br. Aunc. Dem. pl. 34, cites 41 Ass. 7. *Ib.* pl. 6, cites

41 E. 3. 22. 11 Co. 10 b, cites also 48 E. 3. 11 a. b. Fitz. Aunc. Dem. 9. Kitch. 103, cites 36 H. 6. 18. *Brittel v. Bads* (or *Dade*), 1 Ld. Raym. 43. 1 Salk. 186. *Kite v. Laury*, 3 Salk. 34. *Baker v. Wich* (or *Winch*), 1 Salk. 56. S. C. Comb. 186. S. C. (*Parker v. Winch*), 12 Mod. 18. See the pleadings in this case, (called *Barker v. Winch*), *Ex Man. Appendix*, p. 24, pl. 7. *Ib.* also *Hatch v. Cannon*, 3 Wils. 51.

say that the lands are frank-fee, but that he must plead specially how they became so (83).

But Ancient Demesne is not a good plea in an assise by tenant, by statute Merchant, &c., as a chattel interest only is demanded, and not the freehold (84). Nor can it be pleaded in waste upon the statute of Gloucester (85), for the sheriff cannot be commanded by the court of ancient demesne, to enquire of the waste (86).

(83) Kitch. 193. cites 41 E. 3. 22. 19 Ass. 16. 22 Ass. 45.

As wastes are part of the demesnes, improvements by the lord cannot be ancient demesne, 5 Ass. 2. 1 Roll. Abr. 321 (A) pl. 2. F. N. B. 14 D (n. a).

"Frank fee may be held of a manor of ancient demesne," Kitch. 193, cites 11 H. 4. 85. And see 1 Roll. Abr. 321 (A) pl. 1. Br. Aunc. Dem. pl. 15. Cotb. 183, in *Heydon & Pace*.

Br. court baron, pl. 3 cites 7 H. 4. 27, that if land and damages are recovered in assise in ancient demesne court, on execution the bailiff may sell the beasts, and deliver the money to the recoveror in execution of his damages; and *per* Huls, that if a man recover damages in ancient demesne, the bailiff may make execution in land, which is frank-fee held of the manor.

(84) 2 E. 2. 1 Roll. Abr. 323,

pl. 15. 2 Inst. 397. *Martin v. Wilks*, Mo. 211. 2 Vin. Abr. 484, pl. 15.

(85) 7 H. 6. 35. By the opinion of all the court, except Walmsley, *Owen's case*, 36 Eliz. Ow. 24, cites 2 H. 7. 17. 21 E. 4. 3. *Per* 3 Justices (Walmsley doubting) in *Green v. Baker*, M. 37 Eliz. 1 Roll. Abr. 323, pl. 18. *Lex Man.* 40. *Contra*. Br. Aunc. Dem. pl. 37, cites 8 H. 6. 34. *Ib.* pl. 20, cites also 7 H. 6. 35. *Ib.* *Parlement*, pl. 17. Kitch. 189, cites 7 H. 6. 37. 8 H. 6. 82. And see *Cro. Eliz.* 826, in *Smith v. Arden*. *Cox v. Barnsly*, Hob. 47-8.

(86) 2 Inst. 306. 2 Saund. 254 in *Green v. Cole*. Action of Waste upon the statute does not lie in Ancient Demesne, Br. *Parlement*, pl. 17, cites 8 H. 6. 35. For the court cannot award process to the sheriff to enquire of waste; "but waste lies by writ of right there, and shall have

Nor can it be pleaded in trespass (87); nor in debt in the superior courts, for damages recovered in the court of ancient demesne (88); nor in detinue of charters (89); nor in a *warrantia chartarum* (90); nor in a *quare impedit*, for the court cannot write to the bishop (91); nor by the lord, in an action against him, for the land is frank-fee in his hands (92); nor in an action against the lord and others (93); nor for a lessee for years (94); nor for a copyholder (95).

process at common law, viz. distress infinite, *quare inde*, for writ of waste was not at common law." Br. Aunc. Dem. pl. 40, cites 32 H. 6. 25. *Ib.* Waste, pl. 141, cites S. C. (called by error 23 H. 6. 25). *Vide* also on this plea in Waste, 2 Vin. Abr. 484-5, pl. 18, 22.

(87) 46 E. 3. 1. 2 H. 7. 17. Br. Aunc. Dem. pl. 7, 36. *Smith v. Arden* (or *Alden's case*) *ante*. *Cox* (or *Coke*) *v. Barnsly*, Hob. 47. St. C. 1 Brownl. 204. *Redd v. Lord. Camingsby*, Bumb. 132. 1 Roll. Abr. 322 (E) pl. 11, 12, 13. Kitch. 188. cites 46 E. 3. 1. 47 E. 3. 22. 2 Vin. Abr. 482-3. pl. 11, 12, 13. 4 Inst. 270.

(88) 39 H. 6. 3. Kitch. 189.

(89) 1 Roll. Abr. 323 (E) pl. 14. Kitch. 189.

(90) F. N. B. 155. K. Kitch. 189.

(91) 1 Roll. Abr. 323. pl. 17, cites 7 H. 6. 35. Br. Aunc. Dem. pl. 20. Hob. 48, in *Cox v. Barnsly*. Nor in an action upon the Stat. 5. R. 2. Kitch. 188-9, cites 2 H. 7. 17; 21 E. 4. 3. Hob. 47. Nor in a *juris utrum* of his free alms, 32 E. 1. 2 Vin. Abr. 483. pl. 16. 1 D'Anv. 659, pl. 16. Kitch. 189.

(92) 41 E. 3. 22. 1 E. 3. 14. F. N. B. 11 (M). 1 Roll. Abr. 323 (G), 325 (I), pl. 19. 2 Vin. Abr. 487 (G) pl. 2 & marg.

(93) 41 E. 3. 22. 1 Roll. Abr. 323 (G) pl. 3. 2 Vin. Abr. 487 (G) pl. 3.

(94) 41 E. 3. 22 b. 1 Roll. Abr. 323 (G) pl. 1. Fitz. Abr. Aunc. Dem. pl. 9.

(95) *Smith v. Frampton*, 3 Lev. 405. *Brittle v. Bade* (or *Dade*), 1 Ld. Raym. 43. 1 Salk. 196. And see *Wilkins v. Gregory*, Cary, 121-2.

It may here be proper to repeat that in all actions concerning *copyholds* it is essential that the copyhold tenure should be pleaded; and this rule of course extends to copyhold lands held of a manor which is ancient demesne: if therefore they are stated to be held of A. of his manor of B. which is ancient demesne, it will be considered that the lands are pleadable in the lord's court by writ of Right Close (96); and if pleaded that they are *parcel* of the manor, it must be understood that the lands are part of the *demesnes*, and therefore, together with the manor, impleadable only at common law (97).

I shall conclude my observations on the doctrine of pleading, in cases affecting tenants in ancient demesne, or their lands of that tenure, by noticing, that it is not necessary, in order to establish an exemption from toll in respect of an estate held in ancient demesne, to set forth what interest the tenant has in the particular lands; and the allegation that the tenants of ancient demesne lands are quit *of toll in all places in England*, is sufficient, though they are only discharged of toll as to such things which arise on

(96) Which writ we have seen cannot be maintained by a copyholder, *ante*, pp. 635 (n. 14), 656.

(97) *Brittle v. Bads* (or *Dads*), *ubi sup.* *Doe d. Rust. v. Roe*, 2 Burr. 1046. *Kite v. Lawry*, 3 Salk.

34. *Baker v. Wich* (or *Winch*), or *Parker v. Winch*, 1 Salk. 56. Comb. 186. 12 Mod. 18. *Smith v. Frampton*, *ubi sup.* *Ante*, p. 668. *Ante* pt. 1. p. 580.

the lands, or are for the necessary support of their families (98): And that where in trespass for erecting a stall in the market-place, the defendant, a butcher, pleaded in bar a custom for the tenants in ancient demesne to erect stalls, &c., and to be quit of stallage *for their goods sold therein*, and that he did on a certain day set up a stall there *to sell flesh*; this was on demurrer adjudged to be an ill plea, the defendant not setting forth that the stall was set up to sell *his* flesh, and it might have been the flesh of another butcher, and so not within the custom (99).

(Of Fines and Recoveries.)

Fines are to be levied and recoveries suffered of lands in ancient demesne in the court of the manor upon a writ of Right Close (100); and the fine may be *sur concessit* as well as *sur conuissance de droit* (101). And if pleaded in *placito conventionis secundum consuetudinem manerii* it is sufficient, though not said to be upon a writ of Right Close (102). But it should seem that a

(98) *Savery v. Smith*, 2 Lutw. 1144. S. C. 3 Salk. 36. See the pleadings in this case, Lex. Man. Appx. p. 29. ca. 10. Ante, p. 637-8.

(99) *Chapin v. Betsworth*, 3. Lev. 190. See the pleadings in this case, Lex Man. Appx. p. 27. ca. 9.

(100) 2 Inst. 513. 1 Cru. 86.

Hunt v. Bourne, 1 Lutw. 770, 781. S. C. 1 Salk. 339, 344. S. C.

(*Hunt v. Browne*), 3 Salk. 34. S. C. 1 Comy. 93.

(101) 1 Lutw. 770, 771, in *Hunt & Bourne*.

(102) *Ib.* 781.

fine levied in the lord's court by tenant in tail is a discontinuance only, and no bar (103), for that is only when the fine is levied in the court of Common Pleas with proclamations by virtue of the statute of 4 H. 7; yet it has been doubted whether by custom a fine *with proclamations* in the manor court will not be a bar, notwithstanding the statute *de donis* (104); but the better opinion is that it is no bar even by custom (105). A fine by tenant in tail levied in the court of *Ancient Demesne* would, however, be a bar to the issue in tail, under the statute of limitations, 21 Jac.; but where the tenant in tail leased for three lives by a fine *sur concessit*, the court held that the issue in tail, notwithstanding a second fine levied to enure to the conuzee in fee, had a right of entry for twenty years, after the expiration of the lease for lives, when the discontinuance determined, and therefore that the plaintiff was intitled to recover in ejectment, even supposing his lessor to be barred of a formedon, by twenty years having passed after the right of action accrued (106).

And a recovery suffered in the court of *Ancient Demesne*, according to the custom of the manor, will be a bar to an entail, equally with a recovery of socage lands in the Common Pleas (107).

(103) *Hunt v. Bourne*, *ubi sup.*(104) *Elmes case*, Dy. 373 a.

S. C. 1 And. 71.

(105) 2 Inst. 515. 4 Inst. 270.

(106) *Hunt v. Bourne*, *sup.*(107) *Hunt v. Burn* (or *Browne*)

1 Salk. 57, 3 Salk. 34. And see

Kitch. 190, cites 50 App. 9. 2 Cru.

+ Bro. P. 4.

A recovery may be suffered, or a fine levied, of lands held by the tenure of ancient demesne, in the court of Common Pleas (108); yet the jurisdiction of the court has been doubted (109), without, however, any apparent good reason; but as the effect of such a recovery and fine, is to make the lands frank fee, so long as they stand in force (110), and therefore operating to the lord's prejudice, he may reverse the same by writ of Disceit (111), but not by a *Scire*

162. *Green v. Proude*, 1 Mod.

117. 3 Keb. 310. 1 Vent. 107; in this case the court rolls being destroyed, a copy of a recovery of an ancient date, under the steward's hand, was admitted as evidence.

(108) Kitch. 191. And see Preston on Conv. 1 vol. p. 266.

(109) 1 Cru. 86. And see 2 Inst. 513.

(110) 2 Inst. 513. 4 Inst. 270. Kitch. 191, 192. 1 Roll. Abr. 324 (I), pl. 1 to 7 incl. Br. Aunc. Dem. pl. 12. Fitz. Abr. *Cause de remover ploc*, pl. 10. 1 Salk. 57, in *Hunt v. Burn*. Ante p. 635. n. 13. So equally in a recovery at the common law in an *assise*, 11 H. 4. 86. 2 Vin. Abr. 498. pl. 4. So a recovery in a *præcipe quod reddat*. F. N. B. 13 C. But the lands are not frank-fee before judgment. 2 E. 3. 26. Kitch. 191. But a fine levied in C. B. by tenant in Ancient Demesne, in a *currentia charta*,

does not make the land frank-fee, for the land does not pass by it, 21 E. 3. 32 b. 1 Roll. Abr. 324, pl. 6. 2 Vin. Abr. 488. pl. 6.

(111) 1 E. 3. 5. 26 b. 2 Vin. Abr. 497. *Zouch v. Thompson*, 1 Salk. 210. 3 Salk. 35. *Earl of Plymouth v. James*, Lutw. 711. *Humfry v. Bathurst*. *Ib.* 740. *Rex v. Firebrass*. Pra. Reg. C. P. 373. *Rex v. Comyns*. *Ib.* 374. *Griffith & Agard*, 3 Leo. 117: In this case it was held to be sufficient that the words '*cujus hæres ipse est*' were in the body of the writ without stating in the beginning of the writ, that the plaintiff was cousin and heir, &c.; and that the allegation *de antiquo dominio domine regine Angliæ* was good, without saying *corona sua*, &c. And I apprehend that the writ is not in the nature of a writ of error, and consequently that the limitation of twenty years, by 19 & 11 W. 3. c. 14, does not ex-

Facias (112); and the rule extends to the King, when lord of such a manor, as well as a private person (113).

As far as respects the lord, the fine in the court of Common Pleas is *coram non judice*, and consequently no bar to him under the statute of nonclaim (114), or the statutes of limitation (115); for a fine may establish the right of another, but cannot establish its own defects (116). Some doubts, however, have been entertained, whether a second fine in the court of Common Pleas would not operate as a bar to the lord, under the statute of nonclaim, after five years (117); and it should certainly seem, that a fine of elder date will hinder the reversal of a fine of later date by writ of Disceit, but not *e converso* (118). The lord

tend to the writ of Disceit. And see 2 vol. Preston on Conv. 102. For the form of the writ of Disceit, vide 1 Latw. 711.

(112) *Zouch v. Thompson*, 3 Lev. 419.

(113) 7 H. 4. 27. Br. Aunc. Dem. pl. 13. *Ib.* 15 cites 11 H. 4. 85. F. N. B. 97 D. (n. b & c.) *Ree v. Mead*, 2 Wils. 17. *Stowel v. Lord Zouch*, Plowd. 370. 1 And. 74.

(114) *Zouch v. Thompson*, 1 Salk. 210. S. C. 3 Salk. 35. S. C., Ld. Raym. 179. *Cockman v. Farrer*, Skin. 14. Plowd. 370.

3 T. R. 175. And see 2 Vin. Abr. 497 (Q). F. N. B. 13 C. (n. a). Br. Aunc. Dem. pl. 39.

(115) Com. Dig. 348. E. 2.

(116) *Zouch v. Thompson*, *sup.*

(117) 2 Inst. 518. Plowd. 370.

marg. *Lord Zouch v. Bamfield*, 1 And. 172. *Cockman v. Farrer*, *sup.* S. C. Sir T. Raym. 462, where, referring to 2 Inst. 518, that a fine is a bar after five years, it is said, "it's intended another fine, and not the same which was first levied."

(118) F. N. B. 97 D. (n. b), cites 21 E. 3. 25, 26.

in pleading need not set forth any estate, it being sufficient that he is *dominus pro tempore* (119); even a termor may have the writ of Disceit (120). And if the lord's estate be determined, it must be shewn on the other side (121); nor is it necessary to shew before whom the court was held, but only that the lands are pleadable *in curia manerii* (122).

When a fine is reversed by a writ of Disceit, it ceases to be binding on the parties themselves (123), and consequently on the issue in tail (124); but whilst the fine remains in force the tenancy is changed by way of estoppel, and the parties themselves are bound (125); so also is a disseisee (126).

It should seem, however, that a particular course of descent in ancient demesne lands, would not be changed by a fine at common law, in as much as a custom governing the descent runs with the land, and is in respect of the land,

(119) *Zouch v. Thompson*, 1 Salk. 210. S. C. 3 Salk. 35.

(120) 1 E. 3. 5, 26 b. *Earl of Plymouth v. James*, 1 Lutw. 713.

(121) *Zouch v. Thompson*, *sup.*

(122) *Earl of Plymouth v. James*, *sup.*

(123) 4 Inst. 270. Kitch. 191, cites 8 E. 4. 6. 3 H. 4. 6. *Lamvet's case*, 10 Co. 50, a.

(124) *Cary v. Dancy*, Cro. Eliz. 471 b.

(125) 21 E. 3. 25. F. N. B. 13 C. (n. a). 2 Leo. 192, ca. 240. Pending a writ of Right Close, the tenant accepts a fine *come ceo*, &c., yet the land remains Ancient Demesne as to that action. 12 H. 7. Rot. 103. F. N. B. 13 C. n. marg.

(126) 7 H. 4. 3. F. N. B. 13 C. (n. a).

and not of the seigniorship (127); the same as in gavelkind lands, the custom whereof is not changed by a fine or recovery at common law (128): But it has been said that a peculiar customary descent in gavelkind lands, runs not with the lands simply, but by reason of the ancient demesne, and that the custom would therefore be destroyed by a fine at common law (129).

Although a fine of ancient demesne lands cannot be reversed as to one person, and remain good as to another, yet it may be reversed as to part of the land, and remain good as to the residue (130).

(Of the manner of bringing the writ of Disceit.)

When a fine is levied of ancient demesne lands in the Common Pleas, the *ter-tenant* is the person against whom the writ of *disceit* properly

(127) Dy. 72. b. pl. 4. Dal. 12. pl. 21. *per* Hale and Brown, Just. And see 49 E. 3. 8. *per* Kirton, Just. 49 E. 3. 7, 8. Br. Abr. Aunc. Dem. pl. 8. *Id.* Confirmation, pl. 5.

(128) Finch's Law 15. Rob. Gav. [3d. ed. by Wilson] p. 90.

(129) Finch's Law 16, cites 6 E. 6, & Dy. *sup.* n. 127. *Vide* also Dal. 12. *Per* Montague, C. J. cited Rob. Gav. [3d. ed.] p. 91. Customs merely collateral and not incident to the tenure, are not necessarily destroyed by a change

in the tenure, or in other words, the *estate* of the tenant may continue, though the *quality* of it be altered. See Bro. Abr. as in n. 127. *sup.* *Vide* also *Doe & Huntington*, 4 East 282, 290-3. *Wharman v. Cotton*, 1 Lev. 79. S. C. 1 Sid. 135.

(130) F. N. B. 98 P. 17 E. 3. 31. 21 E. 3. 20. Fitz. Abr. Disceit, pl. 37, 44. 1 Ld. Ray. 178-9, in *Zouch v. Thompson*. 1 Lutw. 713. Keilw. 43, pl. 10. *Lee & Loveday*, 1 Leo. 290. S. C. 3 Leo. 120.

lies (131); and persons to whom estates in remainder are limited by the fine need not be named in the writ (132), but those in remainder are to be summoned by *scire facias* to shew cause, if they can, why the fine should not be reversed (133).

The writ of *disceit* may be brought against the conusee as well as the conusor, and against the heir of the conusor or conusee, as the fine works a real deceit, and not a personal tort only (134). It may be brought, I apprehend, against the conusor or conusee alone (135), but then there must be a *scire facias* against the ter-tenant (136).

In an action on the case in nature of *disceit* brought against the vouchee only, to reverse a recovery of lands in ancient demesne, the court

(131) 16 E. 8. 66. Lutw. 713, in the *Earl of Plymouth v. James*, cites Fitz. Fines, 30. *Zouch v. Thompson*, 1 Salk. 210. S. C. 3 Salk. 35. F. N. B. 97 D. n. b & c.

(132) F. N. B. 97 D. n. b & c. 2 Vin. Abr. 496. (P. 2.) pl. 1. cites Thel. Dig. 48. lib. 5. cap. 17. a. 2; citing Trin. 26 E. 3. 65.

(133) 21 Ass. 79 b. pl. 13. Br. Disceit, pl. 21, cites 21 ass. 13. 2 Vin. Abr. 497 (R) pl. 2. marg. F. N. B. 97 D. (n. c), cites 21 E. 3. 56.

(134) *Zouch v. Thompson*, 1 Salk. 210. S. C. 3 Salk. 35. Yet it seems that the writ does not abate by the death of the conusee,

the action being trespass only in its nature. *King v. Dne* (or *Dewe & Kirley's case*) 3 Leo. 3. S. C. Mo. 13. pl. 49.

(135) Win. Ent. 26. *Herne* 93. Lex. Man. 36, marg. F. N. B. 97 D. (n. c).

(136) 7 H. 4. 44. 8 H. 4. 39. F. N. B. 97 D. (n. c). In Vent. 211, (*Anon.*), it is said, "In a writ of *disceit* to reverse a fine of land in ancient demesne, after assignment the conusee shall be made party. So in a writ of error, though the ter-tenant shall not be turned out of possession without a *scire facias*."

of C. B. held that the demandant and tenant also ought to be before the court, to prevent collusion between the lord of the manor and vouchee (137); and it was agreed that the action should be discontinued, and a new action brought against the demandant, tenant, and vouchee.

It has been held that if the conusee be in possession, and the conusor releaseth to him by deed all his right, though the fine should be afterwards avoided, yet the conusee shall hold the lands by virtue of the release (138); and yet after the fine levied, the conusor had no right in the land, but only a possibility to have the land again after the fine made void by a writ of *disceit* (139); So also the estate of the conusee shall stand after reversal of the fine, if confirmed by the heir of the conusor (140): And after reversal of the fine, the heir of the conusor shall not enter upon the *ter-tenant*, without a *scire facias* (141).

(By what acts Ancient Demesne Lands become frank-fee.)

Ancient Demesne lands, as we have already seen (142), may become frank-fee by a fine or

(137) *Rex v. Hadlow*, 2 Sir W. Bl. 1170.

(138) F. N. B. 98 A. Kitch. 191. *Lampet's case*, 10 Co. 50 a.

(139) *Lampet's case*, *sup.*

(140) *Drew Barrentine's case*, 3 Leo. 12.

(141) *Cary v. Dancy*, Cro. Eliz. 471 b. *Lee & Loveday*, 1 Leo. 290, 3 Leo. 120.

(142) *Ante*, p. 674.

recovery in the court of Common Pleas; and if the lord be a party to a fine at common law, he shall never afterwards have a writ of *disceit* (143): They are also made frank-fee by the lord's joining with the tenant in a fine upon a writ of warranty of charters (144).

A fine, with a grant and render to the tenant *without execution*, will likewise make the land frank-fee (145). So also a fine upon a release with warranty to the tenant (146); but it appears to be doubtful whether ancient demesne lands will become frank-fee by a fine upon a release without warranty (147).

It should seem that a fine levied by the tenant without any original writ will make the land frank-fee till reversed (148).

And when lands held in ancient demesne escheat to the lord, they become frank-fee, as he then holds them of the lord paramount (149); and if he be disseised thereof he ought to have an assise at the common law (150).

(143) 30 E. 3. 13 b. F. N. B. 13 C. (n. a).

(144) 21 E. 3. 32 b. 1 Roll. Abr. 325, pl. 27. *Contra*, if such a fine be levied by the tenant alone, *Ib.* 324 pl. 6, cites S. C.

(145) 40 E. 3. 4 b. 1 Roll. Abr. 324 (I), pl. 2. And see Br. Aunc. Dem. pl. 4. 2 Vin. Abr. 488. pl. 2.

(146) 21 E. 3. 25. 1 Roll. Abr.

324, pl. 3. And see *Griffith v. Clarke*, Mo. 143.

(147) 40 E. 3. 4 b. 1 Roll. Abr. 324, pl. 5.

(148) 26 H. 3. Ass. 13. 1 Roll. Abr. 324, pl. 7.

(149) Kitch. 191, cites 18 Ed. 3. 19. Com. Dig. Aunc. Dem. (C. 2).

(150) 41 Ass. 7. Br. Aunc. Dem. pl. 34. Fitz. Aunc. Dem. pl. 18.

: Again, if ancient demesne lands come to the king, they are frank-fee (151), even though the king grants them over to another in fee or for life (152); and therefore to prove the land frank-fee, it is sufficient to shew the feoffment or charter of the king (153): So if the king gives land of ancient demesne, to hold in *frank-almoign*, they become frank-fee (154).

. If the lord confirms to the tenant in ancient demesne, to hold by the same services, there could be no change of tenure, I apprehend, except such confirmation should be by *fine come ceo*, &c. (155); but if the lord confirms to the tenant, to hold *freely*, by the services before due; this makes the land frank-fee (156); yet the tenure only is changed, and not the estate of the tenant (157).

(151) Kitch. 190, 191. 1 Roll. Abr. 324, pl. 9, cites 17 E. 3. 52. 75 B. 21 E. 3. 46 b; cites also *contra* 18 E. 3. 19. 21 E. 3. 56. 21 Ass. 13.

(152) Kitch. 191, cites 13 H. 4. 7. 1 Roll. Abr. 324, pl. 10, cites 11 H. 4. 86. a. b. Br. Aunc. Dem. pl. 15.

(153) F. N. B. 13 C. But if a manor of ancient demesne comes to the king, and he aliens it to another, the lands held of the manor continue ancient demesne, but the demesnes are frank-fee, 21 E. 3. 56. 21 Ass. 13. Br. Aunc. Dem. pl. 32. 1 Roll. Abr. 324, pl. 8.

(154) Kitch. 191, cites 6 H. 4. 2. So also if the lord before the stat. of *quia emptores* had enfeoffed another of ancient demesne land, to hold by knights service, for all land in ancient demesne is by *socage* only. F. N. B. 13 D. 1b. 14 B & C. 4. Inst. 270.

(155) 30 E. 3. 13 b. 1 Roll. Abr. 325, pl. 23. *Griffith v. Clarke*. Mo. 148.

(156) 30 E. 3. 13. 1 Roll. Abr. 325, pl. 23; but see Fitz. Abr. Aunc. Dem. pl. 30.

(157) Kitch. 191, cites 49 E. 3. 7. *Beaumont's case*, 9 Co. 140.

Upon a confirmation by the lord to hold by less services, or by certain services for all services, it would seem not to be fully settled whether the land would become frank-fee or not (158).

But if the lord enfeoff another of the tenancy (159), even with a saving of the ancient services (160), the land will become frank-fee. And it has been decided that a release by the lord, *by fine*, of all services and *customs*, excepting certain specified services, will extinguish the tenure of ancient demesne (161); and that a deed of confirmation to hold by certain services, *at common law*, will make ancient demesne lands frank-fee (162). Again we have seen that a confirmation to the tenant of customary freehold lands discharged of

(158) In favor of the lands becoming frank-fee, *vide* 21 E. 3. 32 b. Fitz. *Cause deremover ple*, 18. 21 E. 3. 33. 2 Vin. Abr. 491, pl. 25, 26, 30. 1 Roll. Abr. 323, pl. 24, 25, 26, 30. Com. Dig. Anc. Dem. (C. 2.) See *contra*. 30 E. 3. 12. b. Fitz. Aunc. Dem. pl. 30. Br. Aunc. Dem. pl. 18, cites 21 E. 3. 32, and states that the plea was removed out of ancient demesne, the tenant claiming to hold at common law, and that the better opinion was that the confirmation did not alter the estate, nor the nature of the land: See also 2 Vin. Abr. 491, pl. 25. *matg.* F. N. B. 15 A. n. b. Confirmation to hold by meaner ser-

vices no frank-fee. Kitch. 191, cites 30 E. 3. 16.

(159) 1 Roll. Abr. 324, pl. 12. *Ib.* 326, pl. 3.

(160) For he cannot hold by the ancient services, 1 Roll. Abr. 325, pl. 20. Fitz. Aunc. Dem. pl. 41.

(161) *Griffiths v. Clarke*, Mo. 143. N. B. the fine was levied in the time of Ed. 2. and of course, after the stat. of *quia emptores*, and not previously as supposed by Mr. Watkins, see 1 Vol. on Cop. 368.

(162) 49 E. 3. 7: Br. Aunc. Dem. pl. 8. *Ib.* Confirmation, pl. 8. Fitz. Avowrie, pl. 59. *Ib.* Aunc. Dem. pl. 42. *Desumons' case*, 9. Co. 140.

all *customs* and services, excepting certain rent and suit of court, extinguishes the customary tenure, and converts it into a free and common socage (163).

But the tenure of ancient demesne will sometimes be restored; for instance, if ancient demesne lands come to the king, and the king re-grants them, *to be held of the same manor*, they again become ancient demesne (164).

And if the king, seised of land in ancient demesne, grants it out for life, it is frank-fee for the time only (165).

It is said also, that if the king seize ancient demesne land, without title, and grant it to another, and the patent be repealed, and he who has right is restored to the land, it will become ancient demesne again (166).

If the lord confirms to the tenant in ancient demesne, to hold by certain services for all services, during life, the land will be frank-fee during life only, and afterwards become ancient demesne again (167).

So also if the lord confirm to a disseisor, to

(163) *Doe & Huntington*, 4 East 271. *Ante* p. 644. *et seq.*

(164) 21 Am. 13. Kitch. 190. But if granted to hold of another manor, the lands would remain frank-fee. F. N. B. 18 C.

-(165) 11 H. 4. 84. Kitch. 191.

Id. 192, *cites* 17 E. 3. 52. But see 2 Vin. Abr. 489, pl. 10.

(166) 1 Roll. Abr. 366. L. pl. 4. *cites* 21 E. 3. 46 b.

(167) 21 E. 3. 33. 1 Roll. Abr. 325, pl. 30.

hold at common law, if the disseisee re-enter or recover, the land shall be ancient demesne again (168).

It has been said that if the lord releases the services for a certain time, the land will become frank-fee for the time (169), but this seems to be very questionable (170).

Although after a fine of ancient demesne lands at common law, no fine could be levied, or recovery suffered of such lands, in the manor court, until the fine at common law should be reversed by a writ of *disceit* (171); yet it should seem that a person claiming under a *paramount* title, must sue at common law, so long as the land remains frank-fee in the hands of the immediate possessor (172); but on recovery at common law by a disseisee of ancient demesne lands, after a fine by the disseisor, the lands will be ancient

(168) 1 Roll. Abr. 326 (L), pl. 1, cites 49 E. 3. 9. But in 50 E. 3. 10. 25, it was held, that if the lord disseise the tenant, and make a *feoffment*, and after the tenant recover in ancient demesne, yet the seigniority is not revived. 2 Vin. Abr. 493 (L), pl. 2. Br. Ann. Dém. pl. 6, 10. "The coming of the land into the hands of the lord does not change the nature of it, unless he makes a *feoffment* thereof." 2 Vin. Abr. 493

(L), pl. 3. marg. cites 21 Ass. 13.

(169) See 1 Roll. Abr. 325, pl. 31.

(170) *Ib.* cites *contra*, 30 E. 3. 13 b.

(171) Kitch. 191. *Ante* p. 674.

(172) But see 50 E. 3. 24 b. 1 Roll. Abr. 326 (L), pl. 3, where it is said, that if the land be made frank-fee as to those in possession, yet it shall not be said to be frank-fee as to those who claim *paramount*, this making of it frank-fee.

demesne again (173). It appears, however, that the election to sue in the manor court for the recovery of ancient demesne lands, is not taken away in all cases, by the lands becoming frank-fee; for although a disseisin by the lord will make ancient demesne lands frank-fee as to him, so long as they remain in his hands (174), yet the tenant has his option, in such a case, to sue either by writ of Right Close, or at common law (175).

(173) 3 E. 3. 33. 1 Roll. Abr. 326 (L), pl. 3, cites 50 E. 3. 24 b. Therefore, if in such case judgment be given in the court of ancient demesne, and the recoveror enters, in trespass brought against him for the entry, he cannot justify by force of the recovery there, for it was *coram non judice*. F. N.

B. 13 C. 1b. (u. a), cites 7 H. 4. 3. And see 2 Preston on Conv. 102.

(174) 20 H. 6. 33. 41. Am. 7. F. N. B. 12 E. 1 Roll. Abr. 325, pl. 17.

(175) 30 E. 3. 13. 41. Am. 7. Fitz. Aunc. Dem. pl. 18. F. N. B. 12 E. 1 Roll. Abr. 325, pl. 18.

END OF THE SECOND PART.

PART THE THIRD.

CHAP. XVII.

OF THE JURISDICTION OF COURTS
BARON (1).

(Origin and Nature of the court baron.)

A COURT BARON, which it is to be recollected

(1) The title of the court is CURIA BARONIS *E. C. militis manerii sui prædicti*, (having the manor's name written in the margin) *tent' tali die*, &c. *Coram A. B. seneschallo ibidem*. 4 Inst. 268.

CURIA (court) is a place where justice is judicially ministered, and is derived à *cura*, quia in *curiis publicis curas gerebant*. Co. Litt. 58 a. *Curia*, which occasionally seems to have implied the court or manor house only of the lord, in one or two entries in Domesday-book, appears to have a more immediate reference to manorial jurisdiction. App. to 2nd General Report from Commis. on Pub. Records, p. 442, cites tom. 1. fol. 35 b. *ib.* fol. 265 b.

BARONIS.—The title of *Baron*,

like all or most of the dignities or titles of honour now existing in England, originated in the feudal institutions of the Normans, and seems about the end of the Conqueror's reign to have supplanted the Saxon title of *Thane*. Those possessing original baronies, and other great lords, having, during the practice of subinfeudation, called their immediate vassals barons, the principal barons, who alone were summoned to attend the councils of the King, and who held of the King in *capite* [2 Inst. 7], were called *barones majores*, or *barones regis* (or *regni*), to distinguish them from the inferior barons, denominated *barones minores*, and who held by knights

is not a court of record (2), is incident to every manor (3), and is incapable of severance under

service and escuage [4 Inst. 46]. The latter appear about the end of the reign of King John to have lost the appellation of baron altogether.

Sir William Blackstone observes, "A *baron's* is the most general and universal title of nobility; for originally every one of the peers of superior rank had also a barony annexed to his other titles. But it hath sometimes happened that, when an ancient baron hath been raised to a new degree of peerage, in the course of a few generations the two titles have descended differently; one, perhaps, to the male descendants, the other to the heirs general; whereby the earldom or other superior title hath subsisted without a barony: and there are also modern instances, where earls and viscounts have been created without annexing a barony to their other honours: so that now the rule doth not hold universally that all peers are barons. The original and antiquity of baronies have occasioned great inquiries among our English antiquaries. The most probable opinion seems to be, that they were the same with our present lords of manors;

"to which the name of Court Baron (which is the lord's court, and incident to every manor) gives some countenance. It may be collected from King John's *Magna Charta*, that originally all lords of manors, or barons, that held of the King in *capite*, had seats in the great council or parliament: till about the reign of that prince, the conflux of them became so large and troublesome, that the King was obliged to divide them, and summon only the greater barons in person; leaving the small ones to be summoned by the Sheriff, and (as it is said) to sit by representation in another house; which gave rise to the separation of the two houses of parliament. By degrees the title came to be confined to the greater barons, or lords of Parliament only; and there were no other barons among the peerage, but such as were summoned by writ, in respect of the tenure of their lands or baronies, till Richard the Second first made it a mere title of honour, by conferring it on divers persons by his letters patent," See 1 Vol. Com. 398-9.

The principal mansion or castle of every barony was called the *caput*

any grant of such court, or any reservation thereof in a grant of the manor (4), except only in the case of the king (5).

The Court Baron was ordained, as well for the maintenance of the services and duties stipulated for by lords of manors (6) on their granting out lands to others in fee, previous to the statute of Westminster 3. (7); as for the purpose of determining actions of a personal nature, as debt, or trespass (8), or detinue of goods (9), where the debt or damage was under forty shillings (10);

baronia, and was appropriated to the use of the person entitled to the barony, and when the barony descended to daughters, the *caput baronia* was allotted to the eldest. It appears to have been subject to curtesy, but not to dower. 1 Inst. 30 b. 31 b. 2 Inst. 17.

(2) Co. Litt. 117, b. 2 Inst. 143. 4 Inst. 268.

(3) 8 H. 7. 1. Kitch. 7, 8, 70. 2 Inst. 99. 4 Inst. 268. Being incident to a manor of common right, it is not lost merely because no court hath, time out of mind, been holden within the manor. Ow. 35.

The entry is sometimes "The Great Court of &c.": this is but a court baron, Kitch. 156.

(4) 10 H. 8. 34. Kitch. 70. *Brown v. Goldsmith*, 1 Brownl. 175. Mo. 870. Hob. 108. Br. Incident pl. 34. cites 19 H. 8.

(5) Mo. 870, in *Brown v. Goldsmith*. See also Sir Robert Acton's Case, Dy. 288 b. And it should seem from the same authority, that the profits of court may be excepted, even by a common person, *Id.* Vide also Com. Dig. Cop. (R. 1. Court Baron).

(6) Kitch. 6. Scroggs, in his Pract. of Courts Lect and Courts Baron, pp. 82-3, says, that these courts were ordained for the three purposes of adjusting differences between lord and lord adjoining; between lord and tenant; and between tenant and tenant. See also *ante* pt. 1. pa. 2.

(7) *Ante* pt. 1. pa. 2 to 6.

(8) Britt. 61. Kitch. 148.

(9) Kitch. 146, cites 6 E. 2. 34 H. 6. 58. But not detinue of writings, F. N. B. 47 B. Kitch. 148.

(10) 19 H. 6. 8. Kitch. 6, 146. 2 Inst. 311. 4 Inst. 264-8. On

and, it should seem, not only as between the tenants of, but as against strangers coming within, the manor (11).

But *account* does not lie in a court baron (12); nor *trespass vi et armis* (13).

According to some ancient authorities, the court baron had conuenance, originally, of all pleas of land within the manor, to the exclusion of all other jurisdictions, except by a *remisit curiam* from the lord (14), and this by the writ of right patent; but it is to be remembered, that the writ of right patent is a command from the King to the lord, that he will do right to the party complaining (15); and that the plea may be removed by writ of *tolt* into the county court, and from thence into the court of Common Pleas, by writ of *pone* (16):—It is also to be observed, that the issue by writ of right patent never could be tried in the court baron, by the great assise, but by battle

attempt to hold plea in court baron of any matter of the value of forty shillings, writ of prohibition lies: Finch L. 451. 3 Bl. Com. 112. But by charter or prescription, as in the case of the Castle of Dover, a court baron may hold pleas above forty shillings, and award a *capias*, Kitch. 187. These, however, are courts of record. Kitch. 187-8, cites 6 E. 4. 3.

(11) Kitch. 146. Br. Court Baron, pl. 1:

(12) Kitch. 146, cites 43 E. 3. 19.

(13) Co. Litt. 118: a. F. N. B. 47. A. 2 Inst. 311, 312. Kitch. 146-8. But see 7 E. 4. 23, cited Kitch. 146.

(14) 2 Bac. Abr. 205. Kitch. 147.

(15) Kitch. 146, 151.

(16) Booth's Real Actions, 86. n. Ib. 89, 90, 91. See further, as to the writ of right patent, *post*.

only (17), and that should issue be joined there, upon the great assise, or foreign plea be pleaded, prohibition lies (18).

(Where and when to be kept.)

The Court Baron, it is clear, may be held at any place within the manor (19), but it appears formerly to have been thought that it must be held at a place certain (20). Although it would be void if held out of the manor (21), yet we have already seen that, by custom, courts for several manors may be held together in one of them (22).

The Court Baron is frequently held with the *Court Leet*, and then the various acts are referred to the court, to which they respectively apply (23): and when a manor has a *customary* court as well as a court baron, the proceedings of both may be entered on the same roll (24).

(17) See the act 59 Geo. 3. c. 46, abolishing appeals of murder, &c. wager of battle, and trial by battle in writs of right.

(18) F. N. B. 4 E. Kitch. 147; who also says, 'if plaint of debt or trespass be sued there, and foreign matter is pleaded, it shall not be tried in court baron,' cites 1 H. 5. 12.

(19) Kitch. 186, cites 8 H. 7.

4. A. 24 E. 3. Co. Cop. a. 31. Tr. 50. Scroggs 83. Ow. 35.

(20) So the opinion of *Briau*, Kitch. 186. Co. Cop. a. 31. Tr. 50.

(21) Co. Litt. 58. a. Glanv. 19. Kitch. 186. Ow. 35.

(22) *Ante* pt. 1. pa. 7.

(23) 1 Freem. 525. ca. 707.

(24) Co. Litt. 58. a. Com. Dig. Cop. (R. 2.)

Courts Baron were anciently kept once in every three weeks (25), but this was for the convenience of the suitors, and they are now more generally held annually only (26); and I apprehend that the lord could not compel a more frequent attendance of the suitors, without some good cause for it being shewn (27), except under an immemorial custom.

(Of the Suitors to the Court, and before whom it is to be kept, and herein of the Steward.)

Freehold tenants alone are suitors to the Court Baron, and it is essential to the existence of the court, that there should be two suitors *ad minimum* (28). The reason assigned for this is, that freemen could only be tried by their peers,

(25) Scroggs 40, 83. Co. Cop. a 31. Tr. 50. Co. Litt. 58 a.

(26) It has been decided that the court may be held even at night, Mo. 68. ca. 185. *Ante* pt. 1, pa. 7.

(27) See 2. Bac. Abr. 206, marg. where it is said "The court of B. R. has granted informations against lords and stewards, for oppressing the tenants, by warning courts baron every three weeks, and distraining them to appear or pay a certain sum of money upon no occasion at all, but to extort amercements from them." But see Scroggs 40.

(28) Br. Court Baron pl. 23. Ib. Comprise pl. 31. Ib. Suit pl. 17. Kitch. 7, 8. Co. Litt. 58. a. *Tonkin v. Crocker*, 2 Lord Raym. 864. *Rex v. Staverton*, Yelv. 190-1, Scroggs 84.

There is an instance in the Register, f. 11, of a cause being removed out of a court baron, by reason of there being but four suitors there, Br. *cause a remover ples &c.* pl. 35. Ib. Suit. 17. and see 1 Watk. on Cop. 9, who says, "But it should seem that there must be more than two frank tenants holding of the manor, to enable the lord to hold a court, for

or equals, and that if there be one tenant only, he has no peer, or judge, and therefore, must appeal to the court of the lord paramount (29). In *Bradshaw v. Lawson* (30), Lord Kenyon said, that this point was so well settled, that cases need not be cited to prove it, and he would only mention that of *Rumsey v. Walton*, which was an action on a judgment alleged to have been recovered in a court baron, and on the trial at the Hereford summer assizes, 1760, before Foster, J. the plaintiff proved the court to have been holden before the steward; on which it was objected that such a court could not be legally held, without two *free suitors*; and the judge being of that opinion, the plaintiff was non-suited.

The suitors of the court baron are the judges of it (31), even in a plea holden by force of a writ of

otherwise, if one of those two were the plaintiff, and the other of those two the defendant, the lord would be under some difficulty to try them by their peers."

And by ancient custom in the manor of Dymock, there must be three benchers of the free suitors at the least, or no court can be holden. 1 Watk. on Cop. 10. (n.) [2d Ed.]

(29) 1 Watk. on Cop. 9.

(30) 4 T. R. 446. See also *Rex v. Main*, ib. 480. In *Glover v. Lane*, 3 T. R. 447, Lord Kenyon

said, "To constitute a manor it is necessary not only that there should be two freeholders within the manor, but two freeholders holding of the manor, subject to escheats."

(31) Kitch. 145-6. 4 Inst. 268. 4 Co. 26 b, 33 b, *Gentleman's case*, 6 Co. 11 b. *Lord Cobham and Browne's case*, 1 Leo. 217: *Rex v. Morgan*, 1 Sir W. Bl. 398. *Eure v. Wells*, T. Jones, 23. *Lowell & Golston's case*, Godb. 68. Ib. 49, ca. 60. Scroggs 88. "In a court baron action of debt lieth for

right (32):—It has, indeed, been thought that the court baron could not, even by prescription, be held before the steward, being a thing of common right (33), but the authorities are quite the other way (34).

It certainly seems a contradiction in terms, to say that the same persons are suitors and judges of the court, but it is now fully established that the

the lord himself, because the suitors are judges," *Ib.* 84. *Kitch.* 145.

"*Nota per* Fineux and Keble, that in court baron the suitors are judges, and in the leet the steward is judge (12 H. 7. 16)." *Br. tit. Court Baron, &c.* pl. 9.

It is not in the court baron alone that the suitors are the judges. "*Nota per* Chock, Justice, that in court baron, county, or hundred, the suitors are judges, and the bailiff and sheriff are only ministers, (6 E. 4. 3)." *Br. tit. Court Baron, &c.* pl. 11.

(32) "*Nota* that the suitors are judges in county court, court baron and hundred, as well in writ of right patent, as in justices, and other suits there; and the sheriff, steward, or bailiff, are not judges there *quod nota bene* (39 H. 6. 5)." *Br. tit. Judgment*, pl. 118. *Jentleman's case, ante*.

(33) *Pill or Pell v. Towers*, *Cro. Eliz.* 791. *S. C. Noy* 20. *Armyn v. Appleost*, *Cro. Jac.* 582.

2 *D'Anvers*. 295. *tit. court baron*. 1 *Nels. Abr.* 501.

(34) 1 *Leo.* 316. pl. 444. 1 *Mod.* 173. *Rex v. Morgan, ubi sup. Tomkins or Tonkin v. Crocher*, 2 *Salk.* 604. *S. C.* 2 *Lord Raym.* 860. *S. C. Lutw.* 1211. *Nels. Lex Man.* 57-8, *Rast. Ent.* 553. a. *Co. Ent.* 118. b, 570. b. *Winch's Ent.* 1014. *James v. Tutney*, *Cro. Car.* 497. *Win.* 30. *Eure v. Wells*, *T. Jones*, 23. *W. Jones*, 434. *Mar.* 28.

It has been said, that there is this distinction, namely, that where pleas in a court baron are held by writ, then it must be before suitors, and the bailiff of the lord of the manor; but where without writ, then it must be *coram sectatoribus* only, *Pells v. Towers, sup.* and see *Scroggs* 88. *Godb.* 49. ca. 60. But in *Jentleman's case*, 6 *Co.* 11. b, it was resolved, that be the plea held by writ, or without writ, the suitors are judges. *Vide also Lex. Man.* 56. pl. 8. *Ante* (n. 32).

suitors are the judges of the court baron, notwithstanding the expression in some books of authority, that the steward is the prothonotary only of the court (35.)

The steward, however, is a *constituent* part of the court, or in other words, a judicial and not merely a ministerial officer (36).

This question was raised, and fully put at rest, in the late case of *Holroyd v. Breare and Holmes* (37), which was an action of trespass, for breaking and entering the plaintiff's house, and seizing and taking his cattle, &c.; the defendants pleaded first, the general issue, and secondly justified, the one as steward of the court baron of the manor of Wakefield, and the other as his bailiff, stating that on the 12th of September, 1817, at a court of the said manor, holden before certain then suitors of the said court, according to the custom of the said court, one J. A. levied his plaint against *Sarah Holroyd*, and afterwards recovered on the plea aforesaid, against her £9:14s. for his damages and costs; and the defendant *Breare* on the 5th of December, 1817, as such steward of the manor, caused his precept to be issued to take the goods of the said *Sarah Holroyd* in execution, which pre-

(35) *Rex v. Morgan, sup.* Earl of Shrewsbury's case, 9 Co. 49. a.

(36) 2 Barnew. & Ald. 473, in *Holroyd v. Breare & Holmes.*

But see *contra* 1 Freem. 478, in *Howard v. Wood.* S. C. T. Jones,

196. S. C. 2 Lev. 245.

(37) *Sup.*

cept was delivered to the defendant *Holmes*, as bailiff, to be executed, and that by virtue of that precept, the goods in question were by him seized, and the trespasses committed. There was another similar justification, setting out a judgment recovered in the same court, at the suit of J. C. against *Sarah Holroyd*. At the trial, at the summer assizes, 1818, for the county of York, before Bayley, J. the principal question was, whether the goods which had been seized were wholly or in part the property of the plaintiff, or of *Sarah Holroyd*. The jury found a verdict for the plaintiff. It appeared also, that the defendant *Breare* was not in any respect personally concerned in the seizure of the goods, but only as having, in his character of steward of the court baron, signed the precept for taking *Sarah Holroyd's* goods in execution. And on this it was contended, that the steward acted in a judicial and not a ministerial character, and that he was not therefore liable for the acts of his bailiff. This was denied on the other side. The point was reserved by the learned judge, with leave for the defendant *Breare* to move to have a verdict entered for him, in case the court should be of opinion he was not liable. A rule *nisi* to that effect having been obtained, the plaintiff's counsel now urged, that the steward of a court baron was only a ministerial officer, the suitors being the judges of the court, and that it

was his duty, as their minister, to see that their judgments were executed properly; and although no action would lie against a judge for what he might do judicially, yet that it was otherwise in the case of a ministerial officer. They also contended, that the steward in the immediate case was answerable, precisely on the same principle as the sheriff was, *viz.* that the law holds it to be his duty to execute the office in person, and therefore makes him answerable, *civiliter*, for the acts of his officer.

For the defendants it was argued, that no instance being produced in which a similar action had been maintained, went strongly to shew that the steward was not liable; and that the distinction between the principal case, and that of the sheriff, was obvious, for the sheriff was no part of the court, out of which the process issued, but that the steward of the court baron was so; and his situation to be compared to the signer of writs in the superior courts, who could not be liable for a mis-execution of them by the sheriff; and that the passages cited (38), only shewed that the steward of a court baron was a minister of that court for some purposes, as, for instance, to register their proceedings, and the like; but that

(38) 4 Inst. 268. c. 57. 1 Inst. Ib. tit. Judgment, pl. 118. (See 58. Br. tit. court baron, pl. 11. these authorities, *ante*, n. 31).

they did not shew that he was their minister, for the purpose of executing their process.

Abbott, C. J. in delivering the opinion of the court, noticed the argument by the plaintiff's counsel, that in the court baron the free suitors are the judges, and observed, that they certainly were so for the purposes stated in the authorities which had been cited. The court were, however, of opinion that the steward was not merely a minister of that court, but a constituent and essential part of it. The court could not be holden without him. No mandate was directed to him as an officer; but he made his mandate to the bailiff. His lordship further observed, that there was this material distinction between the mandate of the sheriff, and that of a steward of a court baron: in the former, the sheriff commands the bailiff to make the levy, and it concludes thus "So that I may have the same before the court, &c." But in the warrant of the steward the bailiff is directed to levy, so that he (the bailiff) may have the same before the court on the day appointed. This therefore was more like the writ of the superior court to the sheriff, than the warrant of the sheriff to his bailiff. That (added his lordship) would seem to be decisive, to shew that the bailiff and not the steward is the minister of the court baron for the execution of its process, and that he is not the servant of the steward in this respect.

The court were therefore of opinion, that the steward was not for the particular purpose a minister, but part of the court itself. And if so, the action was not maintainable against him; and the rule for entering a verdict for him was therefore made absolute.

The above case of *Holroyd v. Breare & Holmes*, having overruled the authorities, that the steward of a court baron is a ministerial officer only (39), goes a great way towards confirming the opinion expressed in some of the books, that a *mandamus* will lie to be restored to the stewardship of a court baron.

In *the King v. The Churchwardens of Kingscleere* (40), Hale, C. J. said, that a *mandamus* would lie for the steward of a court baron, 'if he be not at will only', because he was an officer of justice (41). But there are several authorities that a

(39) A *mandamus* is never granted to compel a mere ministerial officer to do his duty. *Rea v. Walker*, Buller, N. P. 199.

(40) 2 Lev. 18.

(41) And in *the King v. Stanton*, Cro. Jac. 259, (S. C. Yelv. 192), Yelverton, Williams, and Croke, held against the opinion of Fleming, C. J. (Fenner doubting) that a *quo warranto* lies of a court baron, because 'it is matter of right to hold courts, and to administer

justice, and to hold pleas, and to draw assemblies of men together, and to swear officers; which if any doth without right, he is to render an account thereof.' And see *Scroggs* 94. 1 Bulst. 54. Br. *Quo Warranto*, pl. 4.

In *the King v. Hulston*, 1 Str. 621, an information was granted in the nature of a *quo warranto*, against the defendant, for exercising the office of steward of a court leet, but the court said they

mandamus will not lie for a steward of a court baron, 'as being a private thing and not concerning the administration of justice' (42).

In *Ile's* case, in B. R. (43) Twisden said it was ruled in 1652, in that court, that a *mandamus* did not lie to be restored to a stewardship of a court baron, but of a court leet it did, for there the steward was judge; but Hale said he was of another opinion, the steward being judge of that part of the court which concerns the copyholds, and register of the other.

The steward being the judge of a customary court would seem, however, to be an insufficient reason for a *mandamus* lying to restore him to the office (44). And it is, I apprehend, the public or private nature of the office alone, by which the court of King's Bench would be influenced at the present day, in granting or refusing an application for a *mandamus* to be restored to the stewardship of a court baron; and it is obvious that the steward of the court baron, where pleas of debt are holden, and real actions were formerly, and

would not grant it in the case of a court baron, that being only a private right, and no court of record.

It has been refused for holding a court leet in a manor, being a private right, *Rex v. Cann*, T. 10 and 11 G. 2. Andr. 14. See further as to *quo warranto* of court baron. Com. Dig. *Quo Warranto*, (A) & (B). And see as to

quo warranto of court leet, *post* ch. 18.

(42) See *Stamp's* case, 1 Sid. 40. *Middleton's* case, *ib.* 169. *King v. Street*, 8 Mod. 98. Comb. 127.

(43) 1 Vent. 153.

(44) An application for a *mandamus* to swear in a steward of a customary court, was once refused by C. J. Holt. See *Anon.* 12 Mod. 666.

ought properly now to be commenced, is more in the nature of a public officer, than the steward of a customary court, which is for copyhold purposes only.

And since the above decision, that the steward of a court baron is a *constituent* part of the court and not merely a *ministerial officer*, it may be doubted whether the grant of the stewardship of a court baron in reversion would be good (45), and also, whether an infant can preside as steward in a court baron (46).

(45) Held to be good in *Howard v. Wood*, T. Jones, 126, &c. *Ante* pt. 1. pa. 130.

A grant to two for a term of years is good, for the appointment determines with the lives of the grantees, and will not go to the executors or administrators: *Ante* pt. 1. pa. 130.

(46) See as to this point, and further as to the office of a stew-

ard of a court baron. *Ante* pt. 1. ch. 3. pa. 125, &c.

And note. A bishop may grant the stewardship of a manor for life, notwithstanding the statute, 1 Eliz. c. 19. if usually so granted before that statute. *Sir John Trelawney v. Bishop of Winchester*. 1 Burr. 219. And see *Young v. Stoell*, Cro. Car. 279. W. Jones, 310. *Young v. Fowler*, Ib. 555. Mar. 38.

SECT. II.

(Of the Services due from Freehold Tenants.)

WE have already *fully* discussed the nature of the services due to the lord of a manor, in respect of copyhold land; and *partially* also, the nature of those due in respect of land of freehold tenure (47). It may, however, be proper to take a brief view of the obligations imposed on the tenant, by the original grants, under which *socage* lands are held derivatively at this period. And although it is very far from my intention to enter upon a minute consideration of the nature and origin of the feudal polity, or doctrine of tenure, yet a few preliminary observations on the contrasted properties of ancient and modern English Tenure, may not be deemed unacceptable, or inapplicable to the immediate subject of our inquiries.

The feudal constitution (described by Sir Martin Wright (48) to be a military policy of

- (47) *Ante* pt. 1. ch. 7.

- (48) *Ten.* p. 6. And Sir W. Blackstone, [2d vol. *Com.* p. 45.] observes, that "the constitution of feuds had its origin from the military policy of the northern or *Celtic* nations, the Goths, the Huns, the Franks,

the Vandals, and the Lombards, who all migrating from the same *officina gentium*, as Crag very justly entitles it, poured themselves in vast quantities into all the regions of Europe, at the declension of the Roman Empire."

the northern conquering nations), which by degrees established itself over the western world, to the exclusion of the Roman laws, seems not to have been universally adopted in this country, till about the middle of the reign of William the Conqueror (49).

Previous to its introduction into England, the possessions of land were *allodial*, a word signifying positive unqualified right, the owner having the complete and absolute property, and not holding of any particular lord; whereas a *feud*, *fief*, or *fee*, denoted stipendiary property, or a tract of land, held by gratuitous donation, on condition of performing certain stipulated services, chiefly of a military nature. These gifts were originally dependent on the will and pleasure of the grantor, but afterwards were extended to a term of one or more years, subsequently to the life of the feudatory (50), and ultimately were made hereditary.

Such grants as were purely military were denominated *proper* feuds, and those in which the considerations or services were not strictly con-

(49) *Ante* p. 652. n. 6.

(50) Feudatory or beneficiary estates, when granted at will only, were called *Munera*, and when afterwards granted for life, they were termed *Beneficia*, which word is still retained amongst ecclesiastics, whose estates are called

Benefices; and the term *Feuda* was first used when estates began to be granted in perpetuity. *Spelman. Posth. treat. of feuds*, 4, 6, 9. *Wright's Ten.* 19. *Vide* as to the distinction between *allodial* and *beneficiary* possessions. *Roberts, Hist. Emp. Charles 5th*, p. 258.

formable to that character, were deemed *improper* feuds (51).

The fundamental maxim of feudal tenure is, that all lands were originally granted by the King, and are therefore holden immediately or mediately of the Crown (52).

Until the middle of the seventeenth century, a considerable (and according to Sir William Blackstone (53) the greatest) part of the lands in England, were holden by *knight-service* (54), (a tenure implying personal military duty,) and principally of the King *in capite*.

The tenure by knight-service was abolished by 12 Car. 2. c. 24. (55), and differed very little from

(51) For a full illustration of this obsolete doctrine, the author would urge an attentive perusal of Sir Martin Wright's introduction to the law of tenures; and of the history of feuds, in the early part of Chief Baron Gilbert's treatise on tenures, and also, the 4th chap. of the 2d vol. of Sir William Blackstone's Commentaries. *Et vide* Harg. & Butl. notes to Co. Litt. 64. a, 191. a.

(52) *Ante* p. 652. n. 6. The note here referred to shews that our ancestors were not originally beneficiaries, but voluntarily submitted to this fiction of tenure.

(53) 2 vol. Com. 73.

(54) It should seem that knight-service was the implied tenure, if

no particular services were reserved on a grant by the King, prior to the 12 Car. 2. See Dalr. on feud. prop. p. 24.

Escuage is sometimes confounded with knight-service [Co. Litt. § 103], but it merely describes the pecuniary assessment calculated by the amount of a knight's fee, to excuse a personal attendance, for which such service was compounded, or perhaps a pecuniary aid reserved in some instances, in lieu of personal service. Wright's ten. 123.

(55) The prerogative of compelling the heir to be knighted when of age, or to pay a fine to the King, was abolished by 16 Car. 1. c. 20. 2 Bl. Com. 69, 70.

a proper feud, being created by pure words of donation (56), transferred by livery or investiture, and perfected by homage or fealty. This tenure drew to it the advantages of *relief*, and *primer seisin* (57), *wardship*, *livery* (58), *aid* for knighting the lord's eldest son, and marrying his eldest daughter, and for ransoming the lord's person,

(56) Wright's ten. 141. 2 Bl. Com. 68.

(57) Primer seisin seems to be little more than an additional relief, payable by those who held of the King *in capite*. When a tenant *in capite* died seized of a knight's fee, the King was entitled to receive of the heir, if of age, a year's profits of the land, when in possession, and half a year's profits if held in reversion, expectant on an estate for life. Indeed the King was entitled to enter and receive the profits until livery was sued, which being generally sued within a year and a day after the death of the tenant, it was usual to take the first fruits, or a year's profits of the land. This gave rise to the claim by the Popes of the first year's profits of every benefice, by way of first fruits.

(58) Primer seisin was not paid, unless the heir was of age, but if under the age of 21, being a male, or 14, being a female, the lord was entitled to the *wardship*, and

was called guardian in chivalry, which gave him the custody of the body and lands, without account, during such minority. And the lord, by the 3 Ed. 1. c. 22. could keep the female heir in ward until 16. The male, on attaining 21, and the female 16, could sue out their *livery* to obtain the lands out of the guardian's hands, and for this half a year's profits of the land were paid. These advantages to the lord excused the infant heir from *livery*, and in the case of tenants *in capite*, from primer seisin. The ascertainment of the profits arising from these fruits of tenure, suggested the antiquated proceeding of an *inquisitio post mortem*, charging the itinerant justices or justices in eyre, to enquire by a jury of the county, (on the decease of any person of fortune,) the value of his estate, the tenure of it, and who, and of what age, his heir was. 2 Bl. Com. 68.

(59), and also *escheat*. The services were occasional, but with us restrained, as in Normandy, to forty days, and not altogether uncertain, as in proper feuds (60).

The residue of the lands in England were divided into the three tenures subsisting at the present day, viz. 1. *free socage* (61), (which, with the lands held by knight-service, were alike denominated *frank tenements*): 2. *pure villenage*: and 3. *privileged villenage* or *villain socage* (62). The properties and diversities of the two latter are fully treated of in the first division

(59) But the genuine feudal aid appears to have been purely military, and not a contribution to the private necessities of the lord. Wright's ten. 41. See further as to aids *post* n. 68. Wright's ten. p. 40 &c., 105 &c.

(60) Wright's ten. 140, 141. 2 Bl. Com. 62. The proper knight-service was to attend the King in his wars; but there were other species of knight-service of an honorable nature, as *grand serjeanty*. Some services of grand serjeanty are purely military, as to bear the King's banner or his lance, in time of war; and others are honorary only, and in time of peace, as to perform certain offices at the King's coronation; and in some cases these services may be executed by deputy. Co. Litt.

S. 153, 155-7. The honorary services of grand serjeanty were, as well as the tenure by copy of court roll, reserved by the stat. of 12 Car. 2.

The services of *petit serjeanty*, as to render to the King a warlike weapon, are not mentioned in that statute, but *petit serjeanty* still exists, and is considered to be a dignified branch of socage tenure. Co. Litt. 108 b. n. 1.

(61) Or free tenure in common socage.

(62) These are the only lay tenures now subsisting, but it is to be remembered that the tenure of frank-almoign (or free alms), was also reserved by the Stat. of Car. 2, and which is of a spiritual nature, being the tenure by which religious houses held their lands,

of the present work, (63), and I propose now to offer some few observations on the nature of Socage tenure, and the services incident to it.

Socage is a term as old as *domesday-book*: it first occurs in Glanvil (64), and, according to the opinion of our best lawyers, is a tenure *per servitium socæ*, but by Somner (65) thought to be derived from the Saxon word *Soc*, importing a privilege, and *Agium* importing service (66).

Socage tenure is at least agreed to have been originally a conventional service of a certain and determinate, and not of a military nature (67); in some respects, however, it resembles tenure

and by which many ecclesiastical and eleemosynary foundations hold lands at this day. 2 Bl. Com. 101.

(63) Pl. 1. ch. 2. and ch. 15.

(64) Somner's treat. of Gav. 143.

(65) Ib. 133, 141. And see 2 Bl. Com. 80, 81.

(66) 1 Inst. 86. a. And see Mr. Christian's note on this derivation, 2 Bl. Com. 81, citing Bract. Spelman, &c., against Mr. Somner's, and Sir William Blackstone's opinions.

(67) *Burgage* and *Gavelkind* are included in socage tenure. Sir Martin Wright [ten. 145] says "All our English fees or holdings, whether they be Frank or Emphiteuticary, Burgage or Gavelkind, (though Burgage and Gavelkind

have many qualities different from common socage,) do now fall under the notion of socage tenure, which, though they vary in point of service, succession, and the like, as improper feuds, do nevertheless retain the nature of feuds; inasmuch as they are held of some lord or superior by fealty, and usually by some other certain service or acknowledgment; and inasmuch as they yield or pay relief and may escheat." And see Co. Litt. S. 162.

The student is reminded that the descent in burgage-tenure is sometimes (by force of the custom called *Borough English*), to the youngest son, and in Gavelkind tenure is to all the sons equally.

by knight-service or chivalry, socage land being held of a superior lord by fealty, and subject to relief and escheat, and also (previous to the statute of Charles 2nd) to aids (68), marriage and wardship, (though of a different nature from those incident to knight-service,) and to fines for alienation, when held of the King *in capite* (69).

But since the abolition act of 12 Car. 2d. the following services only are incidental to lands of socage or freehold tenure.

(68) The aid *de relief* was taken by inferior lords, being a sum to enable them to pay their fines for relief or seisin to the lord paramount. Wright's ten. 107, cites Madox. Hist. of the Excheq. 428. Glanv. Hb. 9, cap. 8. And inferior lords frequently took aids to enable them not only to pay their fines to the King, but even their debts. All, however, except the above three ancient aids, were abolished as to inferior lords, by King John's Charter, c. 12, 15; which also ordained that no aids should be taken by the King, without consent of Parliament. This provision was omitted in Henry 3rd's charter, and the

old aids re-exacted until, by stat. 25 Ed. 1. c. 5, 6, the clause in the charter of King John was revived. Aids were completely arbitrary until King John's charter, and were not fully ascertained until the stat. West. 1. 3 Ed. 1. c. 36, which fixed the aid of a knight's fee at 20s., and of socage lands, to the value of £20 a-year, at 20s. This only extended to inferior lords; but the same provisions were made as to the King's tenants *in capite*, by 25 Ed. 3. c. 11. The aid for ransoming the lord's person, was, as a thing of course, still left uncertain. Wright's ten. 108, et seq. 2 Bl. Com. 68, et seq.

(69) 2 Bl. Com. 89.

FEALTY.—(and herein of the ancient tribute of *Homage*.) From the earliest period of the feudal system the service of *fealty* was incidental to, and inseparable from, every tenure, with the exception of tenure in *frank-almoign* (70); so much so, that if lands were granted without the reservation of fealty, the tenure was deemed to be *allodial* (71), but nevertheless the oath of fealty might always be dispensed with.

When feuds became hereditary (72), besides an oath of fealty, the parent (as Mr. Justice Blackstone has observed) of our oath of allegiance (73), the tenant (or vassal), after the ceremony of corporal investiture, a form imitated in our modern feoffments of land, usually did *homage* to his lord, which differed from the former in this respect, namely, that the fealty was a profession of fidelity, and the homage an acknowledgment of tenure (74). Such

(70) 9 Co. 123, in *Anth. Lowe's* case. Co. Litt. § 131. Wright's ten. 35, 139. *Vide* also a learned comment on the oath of fealty, Sulliv. Feud. L. lect. 6. p. 68.

(71) *Ante*, p. 702.

(72) Homage was performed only when the grant was of an estate of inheritance, that is, in fee simple or fee tail. Co. Litt. s. 90; but fealty is to be done by tenant for life (Co. Litt. s. 93), or even for years, if he holds imme-

diately by grant or lease from the lord of the manor, but not by tenant at will, except by custom. Kitch. 260. Co. Litt. s. 84. lb. s. 132. lb. 93. a. n. 1. But even as to tenant for years, see the year-books referred to in n. 2. Co. Litt. 67 b.

(73) And see Sulliv. Feud. L. p. 283.

(74) And yet homage could only be performed once, so that if other lands, held of the same lord,

homage was taken in the following manner, viz. the tenant being ungirt and uncovered, and kneeling before the lord, holding his hands close together between the hands of his lord, spoke thus;—"I become your man from this day forth for life and member, and for worldly honour, and shall owe you my faith for the land I hold of you, saving the faith I owe unto the sovereign Lord my King, and to my other Lords" (75).

descended to a person who had already done homage to the lord, no further homage could be required; but fealty might again be enforced. 21. H. 8. Fealty 8. Kitch. 260.

(75) Bract. f. 80. Glanv. l. 9. c. 1. Britt. f. 173. Flet. l. 3. c. 16. Co. Litt. tit. 'Homage.' And this mode of taking a pledge from each tenant signified protection and warranty on the part of the lord. Bract. f. 80. Co. Litt. 67. b. n. 1: but this in later times was held to be peculiar to *homage auncestrel*. Ib. 2. Inst. 11. And see Co. Litt. s. 143. F. N. B. 134. F.

HOMAGE AUNCESTREL. Littleton in treating of *homage auncestrel* tells us that such homage is where the tenant *and his ancestors, whose heir he is*, have held the same lands of the same lord,

and his ancestors, whose heir the lord is, time out of memory of man, by homage, and have done to them homage, which seems to be a strange and unusual tenure, and scarce possible to continue between the same lord and tenant, and their ancestors, and of the same lands, and this time out of mind: And my Lord Coke doubted whether, even in his time, there was any relique of this tenure in England, because of this double prescription, both in the blood of the lord and the tenant, Co. Litt. sect. 143. Ib. 67 b. n. 1. 105 a. n. 1. At all events the tenure of *homage auncestrel*, as implied in the general words "all tenure by homage," was taken away by the stat. of 12 Car. 2. c. 24. Co. Litt. 105 a. n. 1.

It should seem that homage as well as fealty was done by women when of age (76), but that homage was not exacted from *femes covert*, the husband doing both *fealty* and *homage* to the lord for the lands of his wife, if they had issue when livery was sued; and doing *fealty* (77), but not *homage*, if they had no issue (78).

An infant, though he might have performed homage, cannot do fealty it should seem, as that is only to be done upon oath (79); and as no man can swear by attorney, fealty must necessarily be done in person (80).

The lord, in his own person, could alone receive

(76) F. N. B. 257 F. Co. Litt. 65 b. 66 a. But see *contra*, Glanv. lib. 9. c. 1.

(77) Mr. Watkins was of opinion that the wife, only should do fealty for *copyhold* lands, she alone being admitted tenant.—*Ante* pt. 1. pa. 414. And see *Combe's case*, 9 Co. 76. a.

(78) F. N. B. 257 F. Kitch. 260. And therefore until there was issue intitling the husband to curtesy, the homage seems to have been suspended. Br. Fealty & Homage, pl. 10, 16. F. N. B. 257 F. (n. b.) But see Co. Litt. 66, a. &c., where Littleton gives an instance of joint homage by the husband and wife, the husband

alone repeating the words, which Lord Coke says must mean before issue had between them.

(79) Bract. 78. Co. Litt. 65. b. 3 Inst. 11. But Kitch. p. 260 says "In a *per que servitia* an infant was constrained to attorn, and to make fealty, notwithstanding his non-age," cites 20 Ed. 3, Tit. 19. And see 24 E. 3. 63-4. Hal. MSS, cited N. 5. Co. Litt. 65 b.

(80) Co. Litt. 68. a. *Combe's case*, 9 Co. 76. See a singular instance of fealty by attorney, Hal. MSS, cited Co. Litt. 68 a. n. 5. In France, both homage and fealty may be done by proxy, if the lord consents, and by the

the tribute of homage (81), and for this reason a Corporation, who can appear only by attorney, could not take homage (82); but fealty might always be received by the steward of the lord's court, or bailiff (83).

The oath of fealty or pledge of fidelity, and which was consequential to homage, used always to be made immediately after the tenant had performed his homage, and was formerly deemed of the first importance, the seisin of fealty being a sufficient seisin of all other services (84). The oath is now usually administered, or rather res-pited, and an entry thereof made on the manor rolls (85), at the first court after the new tenant's title accrues, and the latter is not only the more general, but the more advisable mode, except, indeed, in those instances, if any exist, where fealty is the only service rendered (86).

custom of some of the provinces even without. *Ib.*

(81) Bract. 1. 2. f. 80. Co. Litt. 4. 92.

(82) *Kitch.* 260.

(83) Co. Litt. 4. 92. Co. Cop. 20. Tr. 15. *Ante*, pt. 1. pa. 414.

(84) *Bevil's case*, 4 Co. 8.

(85) See *ante*, pt. 1. pa. 415.

(86) See further as to fealty *ante*, pt. 1. ch. 7. *Vide* also as to the lord's remedy for fealty post,

p. 713. It appears by *Kitch.* p. 261, that the lord is not constrained to avow on a feoffee, even in case of the death of his tenant, without notice of the feoffment, but may distrain the feoffee and avow upon the feoffor, and in the case of the tenant's death after such alienation, the lord may distrain the issue, and avow upon him. And indeed, by stat. 21 H. 8. c. 10, he need not avow or justify of any person certain.

SUIT OF COURT.—I have already shewn that a Court Baron is incident to every manor; and at this court the freehold tenants were anciently and are still compellable to perform their suit and service, as well to enquire of and maintain the rights of the lord, as to form a jury for the trial of matters in dispute between their fellow-tenants (87); which duty led, in the early feudal institutions, to their designation of peers of the court, *pares curiæ*.

We have also seen that suit of court by freeholders may be done by attorney, but that such attorney cannot be appointed by parol (88): And that joint tenants and co-partners shall do but one suit, the eldest sister performing the suit in the latter instance, and the other joint tenants or co-heirs being contributory for the suit done for them (89).

It has likewise been already stated, that a woman is not allowed to sit on the homage to try issues in a court baron, where the suitors are the judges, nor even to make presentment, unless the husband die without an heir, but that the husband, and not the wife, is to perform all the ser-

(87) See *ante*, p. 687-8, 691.

(89) *Ante*, pt. 1. pa. 103, 419.

(88) Stat. Merton. 20. H. 3. c. 2 Inst. 116.

10. *Ante*, pt. 1. pa. 417.

vices to the lord, in respect of the wife's freehold lands (90).

The remedy for neglect of suit of court, as well as for refusal to do fealty, is by distress, but the distress is considered as a pledge only for the performance of the services, and cannot be sold; for which reason I apprehend it could not be deemed excessive (91), under the statute of Marlbridge (92).

RENTS OF ASSIZE, &c. HERIOTS. — These subjects are already treated of at some length in our considerations on the services due to the lord of the manor from his *copyhold* tenants (93), to which I must beg to refer the reader, being anxious to avoid any unnecessary repetition in a work which I feel has much less pretensions to novelty of matter than of arrangement.

(90) *Ante*, pt. 1. pa. 413, 414.

But see, as to *copyholds*, *ante*, n. 77.

(92) 52. H. 3. c. 4.

(93) *Ante*, pt. 1. ch. 7.

(91) Co. Litt. 68 b. n. 5. *Bevil's case*, 4 Co. 8 b.

RELIEFS.—Fully according with the more general opinion that the *proper*, or ancient relief is not a service, but a fruit or improvement of service (94), this subject might, perhaps, have been introduced with greater propriety at the end of the present chapter, in treating more generally of the *fruits of tenure*, but from the contrariety of opinion as to the true character of the *proper* relief, (induced, possibly, by the circumstance of its being recoverable by distress (95),) and also from the affinity which the relief bears to the exactions prevailing under the feudal system, to which some allusions have been incidentally made, I have preferred classing the observations which it is my design to offer on the law of reliefs, with the consideration of the services usually rendered, at this day, for lands of freehold tenure (96).

(94) See 2 Roll. Abr. 514, 515, (D) pl. 3 & 4. 3 Co. 66, in *Pennant's* case. Co. Litt. 83. a. Wright's Ten. 98 (n. k). Therefore the executors of the lord shall have an action of debt for relief. *Leak's* case, 32 H. 8, cited 4 Co. 49 b.

(95) The lord may distrain, but

his executors or administrators cannot. *Post*, pp. 718, 719.

(96) Another motive for this preference of classification is, that a relief is sometimes due by *reservation*, or under an immemorial custom, in a particular manor. *Post*, p. 719.

The relief has been supposed to have originated after the Conquest, and to have been established on the plan of the Danish heriot (97), upon estates in England being made hereditary; but the better opinion is, that it was a fruit of feudal tenure, and was paid as an acknowledgment for the renewal of the feud, when the succession was arbitrary and dependent on the will of the lord (98); and that it was continued to be paid by the heir, by way of fine for taking up the estate, after feuds became hereditary (99).

The relief is by some ancient writers supposed to have been originally paid in horses and arms, and to have given place to a money payment upon the ordinance called the assise of arms in the 27th year of Henry the second, by which every man's armour was directed to be preserved for his heir (100). But others are of opinion that the relief was originally paid in money with us, as in Normandy (101). And certain it is that the relief has been frequently confounded with the heriot, although there is a great distinction between them,

(97) See the Appendix to 2d Gen. Rep. of Commissioners on Public Records p. 451.

(98) *Ib.* Wright's Ten. 15 Spelm. treat. of feuds. 33. 2. Bl. Com. 65.

(99) But the ancient relief it seems was only payable if the

heir, at the death of his ancestor, had attained 21. 2 Bl. Com. 66. Co. Cop. s. 25. Tr. 28.

(100) See App. to 2d Gen. Rep. of Comm. on Pub. Rec. p. 451.

(101) *Ib.* n. l. Wright's Ten. 100. (n. o).

which Sir Henry Spelman thus notices "Heriots" (he observes) "were *militiæ apparatus* which the word signifieth, and devised to keep the conquered nation in subjection, and to support the public strength and military furniture of the kingdom: the reliefs for the private commodity of the lord, that he might not have *inutilem proprietatem* in the seignory. The heriots were therefore paid in habiliments of war; the reliefs usually in money: the heriot for the tenant that died, and out of his goods; the relief for the tenant that succeeded, and out of his purse: the heriot whether the son or heir enjoyed the land, or not; the relief by none but him only that obtained the land in succession." "I stand the longer" (adds Sir Henry Spelman) "herein, for that not only the report, but even Domesday itself (102), and generally all the ancient monkish writers have confounded heriots and reliefs" (103).

It may, I think, be inferred from several of our ancient text writers that William I. and perhaps

(102) In the above appendix to 2d Gen. Rep. from the Comm. on P. R. p. 451, it is observed, that the heriot occurs more rarely in the Domesday Survey than might have been expected; and that the first establishment, if not the introduction of the compul-

sory heriot into England, is found in a law of King Canute, Lex. Anglo. Sax. Wilk. p. 144. And see Sulliv. Feud. L. p. 281. Co. Litt 83. a. n. 1.

(103) And see Co. Litt. 83. a. n. 1. Sulliv. Feud. L. p. 281: Bract. l. 2. c. 36. 86. a.

Henry I. required reliefs to be paid by military tenants in habiliments of war, on the plan of the Danish heriot, but that they were reduced to some certainty by the laws of the former, and restricted by the latter to a *just and lawful relief*; after having been exacted arbitrarily by William II. (104).

The relief of socage lands, to which all tenures, with the exceptions already mentioned, were reduced by the Stat. 12 Car. 2. c. 24, was fixed so

(104) See Wright's Ten. 99, 100, 101. The relief of a knight's fee is thought to have been certain, even at common law, viz. 100s. Co. Litt. 76 a.; but the composition for reliefs of Earls and Barons, though the relief itself was reduced and made less arbitrary in the reigns of William and Henry I., is generally supposed not to have been ascertained and fully established until the Charters of King John and Henry III., which restored the more ancient Norman relief, in money, fixing the relief of both Earls and Barons *ad centum libras*. Ib. But Lord Coke in his 2 Inst. p. 7, supposes that the lawful and just relief mentioned in the Charter of Hen. I. to be paid by an Earl and Baron was certain, viz. the fourth part of the yearly value of his Earldom or Barony, (i. e. an Earl £100 and a Baron 100 marks), and that the

second chapter of Mag. Ch. was but a restitution and declaration of the ancient Common Law. And see Co. Litt. 83 b.

The titles of Duke, Marquess, and Viscount did not exist in England at the time of Magna Charta; (9 H. 3. cap. 2.), but they were considered to be comprehended under the equity of the stat. and subject to reliefs according to their dignities, viz. a Duke £200; or one-fourth of the supposed yearly value of a dukedom, and a Marquess 200 marks, or one fourth of the yearly value of two baronies. Co. Cop. s. 25. Tr. 32-3. And see *Anth. Lowe's case*, 9 Co. 124 b. The exact amount paid as a relief by a Viscount does not appear to be known. Co. Litt. 83 b.

See further as to relief for lands held by knight-service, *ante*, n. 68.

long back as the 40th law of William I. at a year's rent, which has been constantly taken as a relief for socage lands up to the present day (105); the sum now rendered as a relief having reference to the quit rent payable in respect of the particular lands.

A relief being a fruit of service *only*, is not within the limitation of 50 years, prescribed by 32 H. 8. c. 2. in the case of an avowry or conuſance for suit and service (106).

Yet it should seem that the lord may distrain for the *proper* relief (107), and cannot (as some say) have an action of debt (108); but that his executors or administrators may have an action of debt for

(105) Glanv. lib. 9. c. 4. f. 71. a. Fleta. Lib. 3. c. 17, s. 11. Litt. a. 126-7. 2 Inst. 232. 2 Roll. Abr. 515 (E). Wright's Ten. 105. (n. w.) Sir Edward Coke in his Copyholder [S. 25. Tr. 28] says, "If a tenant in socage die, his heir above the age of fourteen, then shall the heir double the rent that his ancestor was wont to pay to the lord; as, if the tenant holdeth of his lord by fealty, and 5s., then shall the heir double the rent, and shall pay 10s., viz. 5s. in the name of a relief, over and above the 5s. which he payeth for his rent."

(106) 2 Inst. 95. N. 2. Co. Litt. 83 a. *Bevil's* case, 4 Co. 10,

11. *Ante*, pt. 1. pa. 99, n. 132. But in avowry for relief, the avowant must allege a seizin of the services. 2 Inst. 96.

(107) But the distress could not be sold, I apprehend, under the stat. 4 Geo. 2. c. 28. *Scroggs* 98.

(108) Co. Litt. 47 b, 63 b, 162 b. Gilb. Dis. 7. But see *contra* as to action of debt, Co. Cop. S. 31. Tr. 45. *Hungerford v. Hayland or Harryland*, W. Jones, 132. S. C. 2 Bulst. 322. S. C. Latch, 37 &c. S. C. 2 Roll. Rep. 371. See also Dy. 24 a. ca. 149. Lord *North's* case, 2 Lea. 179. And Kitch, p. 86, says, "It seems, the lord shall have debt for

the relief, as well against the tenant as against his executor, and cannot distrain (109): and as the relief is incident of common right to socage tenure, it is not necessary to set forth a title to it in replevin (110).

There is, however, it appears this distinction as to the mode of recovering a relief, namely, that when it is due by prescriptive reservation, or by custom (111), the lord cannot distrain for it, unless he can shew a title to the remedy as well as the payment itself, either by prescription or custom (112).

It has been held that acceptance of rent from the new tenant, is no bar of the relief due from the old tenant (113). And that a relief cannot be apportioned; so that on the death of one of several coparceners, who are but as one tenant to the lord, no relief is payable (114).

relief, and clearly the executors shall have debt for relief, 32 H. 8. 20. 19. H. 6." *Ante*, pt. 1. pa. 423.

(109) See Co. Litt. as in n. 108, *sup.* 1. Sho. 36. in *Shuttleworth v. Garret.* 1 Roll. Abr. 665. Lord St. John v. Brandring, Cro. Eliz. 883. S. C. Noy. 43. It was held in this case that the relief being certain, wager of law was not allowable.

(110) *Freeman v. Booth*, 3 Lev. 145.

(111) As where lands are held of A. of his manor of B. by pay-

ment of rent and a customary relief of one year's value by the heir. N. B. The sum paid as relief custom is very uncertain, and in some places is a year's, and in others half a year's profits, and is frequently payable on alienation, as well as on death. Co. Cop. s. 25. Tr. 27-8.

(112) *Hungerford v. Havyland*, *ubi sup.* Gilb. Dis. 8.

(113) *Parham v. Norton*, Cro. Eliz. 886. S. C. Mo. 643, in *Pennant's* case. 3 Co. 66.

(114) 3 Leo. 13, ca. 30.

SECT. III.

Of Amercements.

AN amercement (115) is in latin called *miseri-cordia*, because it ought to be assessed mercifully by the peers or equals of the delinquent (116).

It is, I apprehend, the province of the homage of a court baron to assess every amercement, the statute of Magna Charta, (9 Hen. 3.) cap. 14, having provided that freemen (117) should be amerced after the manner of the fault committed, and that the amercements should be assessed *only* by the oath of honest and lawful men of the vicinage; that Earls and Barons should not be amerced but by their peers (118); and that an Ecclesiastical person should not be amerced in respect of his spiritual benefice, but in respect of his lay tenement (119);

(115) *Wite* or *Wita* is an old Saxon word, also signifying amercement. Solikewise the word *Bote*, and the word *Werd* or *Were*.

(116) Co. Litt. 126 b. Should a party be amerced without cause, and be distrained, the remedy is action of trespass. F. N. B. 75 C. Kitch. 153.

(117) The word '*freeman*' im-

plies a freeholder, and extends as well to sole corporations, as bishops &c., as to laymen, but not to corporations aggregate. 2 Inst. 27.

(118) Or equals [*per pares*].

(119) "Although this stat. be in the negative, yet long usage hath prevailed against it, for the amercement of the nobility is reduced to a certainty, viz. a duke

and the stat. of Westm. 1. (3 Ed. 1.) c. 6, having enacted that no man should be amerced without reasonable cause, and according to the quantity of his trespass, '*and that by his or their peers.*'

Yet by prescription the steward, even of a court baron, where the suitors are the judges, may assess an amercement (120); but then the amercement must be affeered by the peers or equals of the offender, that is, by free tenants of the manor:— And where debt was brought for an amercement, which though affeered did not appear to be so, the action was held not to lie (121).

The practice of affeering amercements arose out of the above statute of Magna Charta, it being considered that the extent of a fault committed could only be known by the affeement of the peers of the offender (122).

But as the act of affeement is no otherwise prescribed by that stat., or by the above stat. of Westm. 1, than by the constructive sense of the

£10, an earl £5, a bishop, who hath a barony, £5, &c. In the Mirror it is said that the amercement of an earl was £100, and of a baron an hundred marks." 2 Inst. 28. And see 8 Co. 40 a.

(120) *Blunt v. Whitacre*, 1 Leo. 242. But see *Rowleston v. Alman*, Cro. Eliz. 748. Kitch. 154, says, "The lord cannot amerce a man

in his own court, for trespass made to himself, by the law, but he may by custom." And see for this also *Blunt v. Whitacre*, *sup.*

(121) *Baldwin v. Tudge*, 2 Wils. 20. And see *Conyers v. Franke*, 3 Lev. 19.

(122) Br. Amerc. pl. 50, cites 10. H. 6. 7.

provisions just cited, the spirit, as well as the literal meaning of those provisions, would seem to be satisfied by an amercement in a *particular sum*, without any affeerment (123).

It is, however, the more usual, and certainly the more advisable course, for the homage of the court baron to adjudge the party to be amerced in general terms, *quod sit in misericordia*, and then to have the sum ascertained by affeerors (124). And when the homage amerce in a sum certain, the reasonableness of that sum is usually submitted to two of the same homage, in the character of affeerors.

As it is by the judgment of his *peers* that every man is to be amerced, it is of course essential that two, at least, of the homage should be appointed affeerors (125); and the affeerment, it should seem, must be made at the same court (126).

Should the amercement be immoderate, and the lord or steward neglect to have it moderated by affeerment, the writ of *moderata misericordia*

(123) And see *Matthews v. Cary*, 1 Sho. 62. Per Holt C. J. *Brook v. Hustler*, 11 Mod. 76.

(124) *Brook v. Hustler*, *sup.* S. C. 1 Salk. 56.

(125) Kitch. 153, who there says "in all court barons three are sworn to ratify the amercements;" but this, I apprehend, is a misprint,

for in the same page he says, "If the steward or the bailiff will assess any amercement without confirming by two upon their oaths, after that the homage hath presented the offenders, there is a special writ upon the stat. of Mag. Ch. c. 14."

(126) 3 Keb. 363 in *Cutler & Grenwick. Scroggs* 150.

may be sued out, directed to the lord or his bailiff, commanding them that they moderately amerce the party according to the quantity of his fault, &c., which writ is founded on the above stat. of Magna Charta, c. 14; and the process upon it is *alias* and *pluries*, and attachment, which attachment is directed to the sheriff (127).

When two or more are amerced for the same trespass, they cannot join in a writ *de moderata misericordia*, as they should be severally amerced (128).

Where, according to an established custom in the particular manor, a by-law is made, and a penalty laid upon every tenant guilty of a breach thereof, such penalty is in the nature of a fine set by the Court, and no affeerment can be necessary (129): Indeed an affeerment or alteration of the penalty would be illegal (130). But if the fine in such a case were discretionary, then I apprehend affeerment would be essential (131).

A Court Baron not being a court of record, neither the lord nor steward can fine or impri-

(127) F. N. B. 75. Kitch. 153. Co. Litt. 126 b.

(128) *Godfrey's case*, 11 Co. 43 a.

(129) *Castle v. Oldman*, 1 Leo. 208. *Davis v. Lowden*, Cart. 99. *Grissley's case*, 3 Co. 38 b. *Morgan's case*, 8 Mod. 301. But

in the latter case one Just. was of opinion that the custom was abrogated by Magna Charta. And see *Edwards v. Hughes*, Gilb. Eq. Rep. 209.

(130) *Scarning v. Oryer*, 3 Leo. 8. S. C. Mo. 75. S. C. Bendish 159.

(131) *Morgan's case*, *sup.*

son (132); nor can the lord or steward assess an amercement for a private trespass done to the lord, not even by custom (133).

The lord of a manor cannot distrain for an amercement in a court baron, as of common right (134), for he shall not have a double distress, and he may distrain for the service itself (135); but the remedy for an amercement is action of debt (136), in which action the defendant may wage his law (137).

It should seem, however, that the King by his prerogative may distrain for an amercement, as of common right (138); and that in every case a distress for an amercement in a court baron may be good by prescription (139).

The bailiff of a manor cannot distrain *ex officio*, nor *per mandatum* of the lord, but must have a

(132) Co. Cop. s. 26. Tr. 34. *Griesley's case*, 8 Co. 38 b. *Godfrey's case*, 11 Co. 43 b. 1 Roll. Rep. 74. *Waterman v. Cropp*, Godb. 381. Scroggs 5. And see *Lord Cobham v. Brown*, 1 Leo. 217. But it would seem that the Admiralty Court, which is no court of record, may fine and imprison for a contempt in court. *Sparks v. Martyn*, 1 Vent. 1.

(133) *Blunt v. Whitacre*, 1 Leo. 242. *Partridge v. Walker*. P. 16. Car. 2. B. R. Scroggs 147.

(134) *Pell or Pill v. Towers*, Noy 20, Cro. Eliz. 792. *Rowleston v. Alman*, Cro. Eliz. 748. *Blunt v. Whitacre*, *sup.* Scroggs 145.

But see Co. Cop. s. 31. Tr. 45. 1 Brownl. 36.

(135) Gilb. Dis. 16. *Goosey v. Pot*, Ow. 146. *Allen v. Givers*, Mo. 185. *Godfrey's case*, 11 Co. 43 a. (*sup.*) *Pell or Pill v. Towers*, *sup.* Ante, pt. 1. pa. 417.

(136) 12 R. 2. Statham, f. 62 Kitch. 86. Ib. 145, 153-4. Gilb. Dis. 11.

(137) Kitch. 153. Scroggs 137. Co. Litt. 295. a. Contra in debt for fine or amercement in court leet, because the leet is a court of record. Co. Litt. 295. a. Scroggs 137.

(138) *Rowleston v. Alman*, *sup.*

(139) *Rowleston v. Alman*,

special warrant from the lord or steward (140), and it should seem that the precept must be set forth in the pleadings (141).

The bailiff is not punishable in trespass for levying damages by command of the steward, although the party pleads to the jurisdiction, unless, indeed, the verdict be defeated by a writ of false judgment (142).

In trespass on distress for an amercement in a court baron the defendant must plead the exact title of the court, before whom it was held, that the trespass was committed *intra manerium*, and not merely that it was presented that a trespass was committed (143), and that the distress was made *intra jurisdictionem curiæ* (144).

It should seem that the amercement is lost by the death of the tenant before it is levied, as it is *quasi actio personalis* (145); and not like the case of relief, where action lies against an executor (146).

Blunt v. Whitacre, *Godfrey's case*,
Pell or Pill v. Towers, *Partridge*
& *Walker*, *sup.*

(140) *Rowleston v. Alman*, *sup.*
Steverton v. Scrogs, Cro. Eliz.
698.

(141) *Lamb v. Mills*, 4 Mod.
377. The bailiff should be sworn
to the due discharge of the duties
of his office. See *Scroggs* 99.
1 Roll. Rep. 338.

(142) *Kitch*. 148.

(143) *Armyn v. Appletoft*, Cro.
Jac. 582. *Scarning v. Cryer*, 3
Leo. 7. S. C. Mo. 75. S. C.

Bendl. 160. And see *Parham*
v. Norton, Cro. Eliz. 886. *Blunt*
v. Whitacre, *ubi sup.* But see
Lukin v. Eve, Mo. 89.

(144) *Anon.* 1 Mod. 75.

(145) *Jackman v. Hoddesdon*,
Cro. Eliz. 351. Being a personal
default, the castle of a stranger
or lessee of the tenant could not
be distrained. *Pell or Pill v.*
Towers, *ubi sup.* And see 41 E. 3.
26 b. p. 23, cited Vall. Dy. 317 b.
n. a. *Goosey v. Pot*, *ubi sup.*

(146) Co. Litt. 295 a. *Ante*,
p. 719.

SECT. IV.

Of By-Laws.

THE tenants of a manor, or vill, it is said, may make by-laws touching their commons and the like, to bind themselves, but not strangers (147); and again it is said, that where a by-law is for the public good, as to make a cause-way or bridge, it is binding on all, though all do not agree (148), and even without a custom (149); but I apprehend that a by-law in a court baron will bind only such tenants as are assenting, unless it be made under an immemorial custom, or by prescription (150). And even with a custom in favor of a by-law a stranger could not be bound by it (151), as the custom must be reasonable in its commencement.

(147) *Vide* Br. tit. customs, pl. 32, cites 21 H. 7. 40. Lex Man. 42. pl. 1. Hob. 212, in *Norris v. Staps*.

(148) *Vide* Kitch. 89, 156, cites 44 E. 3. 19, which see Br. tit. Customs, pl. 6. And see 1 Mod. 194, in *Rogers v. Davenant*. 8 E. 1. Ass. 413, cited Kitch. 89.

(149) 5 Co. 63 a. in the *Chamberlain of London's* case. In this case a by-law for repairing a church or an highway were con-

sidered equally for the public good, and therefore binding. Scroggs 140; but some of the books distinguish between the two cases, and deem the latter only good. 44 E. 3. 19. Kitch. 89.

(150) See Kitch. 89, 156. Hob. 212. Mo. 579.

(151) 11 H. 7. 14. 21 H. 7. 40. Fitz. Abr. tit. Prescrip. pl. 67. Br. Abr. tit. Prescrip. pl. 40. Ib. Customs, pl. 32, 75. Kitch. 89, 156.

So where the by-law was that no tenant should put a steer on the common being a year old or more, upon pain of sixpence for every offence, and that it should be lawful to distrain for the same, it was adjudged on demurrer in replevin, that this by-law was void; for where a man hath right of common for all commonable cattle, it is against common right to restrain him from one particular sort of cattle; but if the by-law had been that none should put in his cattle before a particular day, it had been good, for that would not take away, but only order the inheritance. (152).

And where the homage, under a custom to make by-laws for the well ordering of a common, ordained that no commoner should put his sheep in a particular part of the common, under a penalty of 3s. 4d. to the lord, upon demurrer in replevin, this was adjudged to be a good law, especially since it did not take all the common, but only for sheep, *and in a particular place* (153).

And again where the inhabitants of a particular place used to repair a bridge for the convenience of the commoners, and a by-law was

(152) *Erbery v. Latton*, 1 Leo. 189. S. C. 1 And. 234. One cannot prescribe to make by-laws to alter inheritances. 49 Ass. 8. Kitch 90. And see *per* Manwood, 15 Eliz. Kitch. 156.

(153) *James v. Tintney or Tintney*, Cro. Car. 497. S. C. W. Jones, 430. S. C. Win. 30. And see the argument of the Ch. J. in S. C. Mar. 28.

made that the inhabitants should repair the bridge before a certain day, under a penalty, and this not being done, the default was presented at the next court, and one of the inhabitants was distrained; and on demurrer in replevin the plaintiff had judgment, because the defendant had set forth *that the steward made this by-law, with the consent of the homage*, whereas all by-laws are to be made by the homage (154).

When a by-law is made by custom, the breach of it need not be presented by the homage, nor is it necessary in replevin to aver the necessity of a by-law (155). And notice of it is unnecessary, it being proclaimed in court, where every tenant is bound to attend (156).

And when a penalty is inflicted for a breach of a by-law, for which the lord distrains, and does not say whose cattle they were, yet it is said they shall be intended to be the cattle of the offender (157).

The penalty for a breach of a by-law made at a court baron, is in the nature of a fine rather than an amercement, and is not affeerable.

(154) *Wells v. Cotterell*, 3 Lev. 48. See the pleadings in this case, Lex Man. App. p. 31. pl. 11. But see the Report of *James and Tintney*, in Mar. Rep. 28. and Lord Exeter's case, Scroggs 140.

(155) Lord Cromwell's case,

3 Leo. 38. S. C. Dy. 323. Lex Man. 42. And such by-laws bind the tenants as well freeholders as copyholders, *Anon.* (but *qu. S. C.*) Godb. 50.

(156) *Tintney v. James*, *sup.*

(157) Lex Man. 42. pl. 2.

In the case of *Scarning v. Cryer* (158), under a custom to make by-laws, and to set penalties on those who offended against them, and distrain for the same, a by-law was made, and at another court the defendant was presented for a breach of it, by which the penalty (which was 20*s.*), was forfeited, but *ex gr. cur'*. the penalty was affeered at 6*s.* 8*d.*; and upon a demurrer to the conusance, it was adjudged ill, not only because a pain of a certain sum, as this was, could not be altered, but also because the defendant pleaded that the presentment was made *coram sectatoribus*, without shewing their names (159).

Where the custom of the manor authorising the homage to make by-laws, and assess penalties on breach thereof, should be silent as to the remedy, and there should be no prescription for a distress, the penalty could only be recovered by action of debt by the lord, supposing the penalty given to him by the custom, and it would seem that the defendant might wage his law in this action, as well as in action of debt for an amercement in court baron (160).

(158) 3 Leo. 7. S. C. Bendl.
159. S. C. (*Scarning v. Criett*),
Mo. 75. .

(159) *Vide also Garret v. Hig-*
by, T. Jones, 129.

(160) *Tyndal v. Toller or Tuck-*
er, Bendl. 140. S. C. cited Mo.
277. 1 Leo. 204. *Ante*, p. 724.

SECT. V.

Of Complaints in nature of Personal Actions.

ALL pleas in a court baron of common right, and of a personal nature, are determinable by wager of law (161); yet by prescription they are to be determined by a jury, and the trial may be by jury, with the consent of the parties (162).

But unless warranted by custom the lord cannot compel the suitors of the court baron to be sworn, as between party and party (163), except, indeed, in a writ of right patent, wherein a plea is held of freehold, and then as the writ is *mandatum regis*, an oath may be administered (164).

The process on plaint in a court baron is sum-

(161) 2 Inst. 143. Kitch. 225; 384. In waging his law the defendant must bring with him eleven persons, of his neighbours, that will avow upon their oath, that in their consciences he saith truth. Seroggs 136.

(162) 33 H. 8. 143. Kitch. 225, 384.

(163) 2 Inst. 142. And see Kitch. 82. But to enquire for the lord of the articles belonging to the court baron, or hundred, they

may be sworn, 2 Inst. 142. N. B. The stat. of Westm. 2. c. 36, subjecting lords and stewards of courts procuring suits to be instituted, to a fine to the King, and to treble damages to the party grieved, (and who at common law could only recover single damages,) extends to courts baron and courts leet. 2 Inst. 444.

(164) By stat. of Marth. 52 H. 3. c. 22, none may distrain his freeholders to answer for their

mons, and distress infinite, till the defendant appears (165), but the court has not power to make execution as in the superior courts (166); and the distress in a court baron is only in nature of a pledge, and cannot be sold, except by special custom (167):—Neither are the goods forfeited to the lord, even if the manor belongs to the King (168).

Yet by special custom a *levari facias* may be awarded in a court baron, and the goods sold; but in any proceedings consequent on the execution, the custom must be pleaded (169).

freeholds, nor for any things touching their freehold, without the King's writ; nor shall cause his freeholders to swear against their wills, for no man may do that without the King's commandment: And this act was confirmed and enlarged by 15 R. 2. c. 12. 16 R. 2. c. 2. *Vide* 2 Inst. 142-3.

(165) In *Tubervill v. Tipper*, 9 Roll. Rep. 493, it was agreed that process in court baron was summons, attachment, and distress infinite. And see 38 E. 3. 3. 1 E. 4. 10, cited Br. Court Baron, pl. 5, 10. Bulst. 53. *Vide* also 34 H. 6. 53, & 37 H. 6. 53, cited Kitch. 152. Scroggs 84. Lex. Man. 58. But N. B. the attachment in the above case of *Tubervill v. Tipper*, appears to have

been awarded *secundum consuetudinem curiæ*. *Vide post*.

(166) 4 H. 6. 17. Br. Court Baron, pl. 6; 7. *Id.* Execution, pl. 80, cites 22 Ass. 72 Fitz. Execution, pl. 110. But in *Doe & Parmiter*, B. R. Hil. 24 Car. 2. it was said *per Cur.* that the constant course in all courts was *levari facias*, which was meant in the old books by a *Distringas*; see Scroggs 93

(167) *Vide* Br. Abr. as in n. 166. *sup.* *Frye v. Burgh*, Noy 17. *Pell v. Towers*, *ib.* 20.

(168) *Gomersall v. Medgate*, Yelv. 194. S. C. (*Gomersale v. Ways*), Cro. Eliz. 255. Lex. Man. 58-9. And see *Hewett v. Norborough*, (*qu. S. C.*) Bulst. 52.

(169) See the authorities, *ante*, n. 166, & 167.

Should a debt be divided in a court baron, so as to reduce each plaint below 40*s.*, the defendant may have a *supersedeas*; and of this the defendant may wage his law (170).

The want of summons in a plea of debt, in an inferior court renders all the proceedings illegal (171); but where, in trespass, the defendant pleaded that an attachment was awarded on non-appearance, *secundum consuetudinem curiæ*, and the plea was demurred to for irregularity, a summons being the first process, and not an attachment, it was adjudged that the attachment should be intended to be *after the summons* (172).

The court baron not being a court of record, a *capias* cannot be awarded by it, except indeed by charter or prescription (173); and for the same reason a writ of error does not lie on a judgment in the court baron, but the party may have a writ of false judgment (174).

The proceedings in the court baron, as in all other inferior courts, are traversable, and should therefore be set forth at length in the pleadings (175); but in replevin in court baron, the plaint

(170) F. N. B. 239 H. Br. Court Baron, pl. 20. *Ante*, n. 161.

(171) 1 Str. 457.

(172) *Tubervill v. Tipper*, *ante*.

(173) Kitch. 117. *Ante*, p. 689, n. 10.

(174) Scroggs 84, 93. Kitch. 187. Co. Litt. 117 b. *Atwood's* case, Lex. Man. App. pl. 17. *Basset v. Harris*, lb. pl. 18. And see Br. Court Baron, pl. 21.

(175) *Garret v. Higby*, T. Jones, 129. *Scarling v. Criett*, or *Scar-*

cannot be removed, either by plaintiff or defendant, by *pone* or *recordari*, without cause shewn in the writ (176).

A regular interlocutory judgment may be set aside by the judge of every inferior court, in order to let in a trial of the merits (177); but he cannot grant a new trial, or set aside a verdict, except for irregularity, fraud, or surprise (178).

ning v. Cryer, Mo. 73. S. C. 3 Leo.

7. S. C. Bendl. 159. Lex. Man.

57.

(176) F. N. B. 70 A. B. Gilb.

Dis. 105. If after removal of the
plaint, the party be distrained
again for the same cause, he shall

have the writ of recaption. F. N.

B. 73 C.

(177) *Rex v. Peter*, 1 Burr. 568.

(178) *Bailey v. Bourne*, 1 Str.

392. *Blacquiere v. Hawkins*,

Dougl. 379. *Jewell v. Hill*, 1 Str.

499. *Rex v. Urling*, Fortesc. 198.

N B. It was adjudged in Easter Term last, in the court of B. R. upon an application for a mandamus to receive and admit a plaint in a manor court (of ancient demesne), that a chartered right in the steward and suitors of the court, of determining plaints of debt (though exceeding 40s.), trespass *vi et armis* &c., was not lost by non-user for near fifty years. *Rex v. The Steward & Suitors of the Manor of Havering Atte Bower*, 5 Barn. & Ald. 691. And see *Rex v. The Mayor & Jurats of Hastings*, ib. 692. n. Ante, p. 689. n. 10.

SECT. VI.

Of the Writ of Right Patent (179).

A writ of right patent, properly so called (180), is a writ brought by him who has the full and mere right of property in the *fee simple* of the land, to recover the right of possession which he cannot be restored to without a judgment first had for him in the King's court, or *some court baron* (181).

The writ of right patent, like all other original writs in real actions, is sued out of the high court of Chancery, and is directed to the lord of the manor, of whom the land is holden, commanding him to do right to the demandant in his court:—but if the lord is not in England, the

(179) See the form of this writ in the Appendix to 2d. & 3d. Parts.

(180) Writs of right are of several sorts, as the *Writ of right patent*, (of which we are now speaking): *Writ of right close* of lands in ancient demesne (already fully treated of, *ante*, tit. 'Ancient Demesne'): *Writ of right of London*, (concerning lands in London, and directed to the mayor and sheriffs), F. N. B. 6 A.

Booth's Real Actions, 117: And *Writs of right de rationabili parte; and of advowson*; Booth, 119. 121. F. N. B. 9, 30 B. All other writs of right, as the *Writ of dower unde nihil habet*, the *Writs of escheat, formedon, de rationabilibus divisis, quo jure, &c.* are writs of right in their nature only. Booth 125.

(181) Bract. l. 5. c. 1, &c. Booth 85.

writ is directed to his bailiff (182); and then the Chancellor of England is to be certified thereof (183).

The original thus sued forth is to be brought to the steward of the court of the manor, of which the land is holden, who, after pledges to prosecute are given, and after entering the demand made by the writ, is to deliver the writ again to the demandant, with whom it is to remain, and which is not the case as to any other writ (184).

But where the lord remits his court to the King (185), or has no court, then the writ is directed to the sheriff (186); and though it was formerly the practice to commence this action in the court baron, and to remove it afterwards into the county court, by writ of *tolt* (187), and from thence into the Common Pleas, by writ of *pone*

(182) Booth 90. F. N. B. 1 H.

(183) F. N. B. 1 F. There must be fifteen days at the least between the *teste* and the return of the writ. Booth 1, 92.

(184) Booth 90.

(185) See form of license from the lord. Rast. 246. a. F. N. B. 3. A.

(186) Sir Ed. Coke [4 Inst. 271], in treating of the jurisdiction of the coroner, says, "besides his judicial place, he hath

"also authority ministerial, as a
"sheriff &c., viz. where there is
"just exception taken to the sheriff, judicial process shall be
"awarded to the coroner for the
"execution of the King's writs,
"in which cases he is *locum*
"*tenens vicecomitis*, and in some
"special cases the King's original
"writ shall be immediately directed unto him."

(187) See the form of a writ of *tolt*. 3 Bl. Com. App. No. 1. s. 2.

(188), yet, without all this circuitry, the demandant may have his writ of right, immediately returnable into the Common Pleas, which is most safe and usual (189): But the writ must state that the lord of the fee has remitted his court (190); and it is not then material whether he gives license or not; for if this be omitted, it will be sufficient if the lord send his license to the King in Chancery afterwards (191).

I have shewn in treating of customary plaints in nature of real actions (192), that the grand writ of right must be brought by the statute of limitations (193), within sixty years after the title

(188) See the form of the writ of *pone*, 3 Bl. Com. App. No. 1. a. 3. When the bailiff or steward delay the demandant, and will not send out process, he may remove the plea into the county court by *tolt*, and afterwards (on the return of the *tolt*), into the Common Pleas, by *pone*, or *recordari facias*. Booth 89, 90. F. N. B. 3 F. The demandant might always remove the plea without cause, first by *tolt* into the county court, and then by *pone* into the Common Pleas; and the tenant with cause shewn may remove the plea out of the lord's court by a *recordari*, into the Common Pleas immediately. Booth 91. F. N. B. 3 G. Rast Ent. 245. a. But the tenant cannot

remove the plea without good cause being shewn. *Rex v. Morgan*, 1 Sir Will. Bl. 398, in which case it was held by Wilmot, J. that the writ of *tolt* ought to be directed to the suitors of the court, and not to the steward. A different rule prevails as to the removal of a plea by the demandant from a court of ancient demesne. *Ante*, p. 661, &c.

(189) Booth 91.

(190) See the form of writ of right patent, *quia dominus remisit curiam*, *post*. App. to 2nd and 3rd Parts.

(191) F. N. B. 2 F., 3 A. Booth 91.

(192) *Ante*, pt. 1. pa. 568.

(193) 32 H. 8. c. 2.

has accrued, if the action be upon the seisin of the ancestor, and within thirty years if brought upon the demandant's own seisin, and have adverted also to the general principles governing the pleadings in a real suit (194), to which I would merely add, that in such actions the estate sought to be recovered should be described with great precision, to enable the sheriff to deliver seisin thereof to the demandant (195):—and further that the rule of pleading is that every *pre-*

(194) *Ante*, pt. 1. pa. 559, *et seq.*, 585-6. But I have omitted to state that in a real action the tenant is to give evidence first, for he affirms that he has more right than the demandant, which ought to be first proved. *Heydon v. Ibgrave*, 3 Leo. 162. S.C. Gouldsb. 23. 5 East. 277, in *Dowland & Slade*. And see Co. Ent. 182. Hughes' Abr. 86. Gilb. Ev. 146. "The tenant first begins his case, because the seisin is first prayed for and joined by him; however, if the tenant tenders the demy-mark in court, at the time of the trial, the demandant must then begin, so held by Mr. J. Heath, in *Throgmorton*, Bart. v. *Broker*, Gloucester Summer Assizes, 1800, who cited the case in Mo. 762. But it seems questionable whether that case war-

"rants it; these three points were ruled by the court, 1st. That the demy-mark ought to be tendered at the joining of the seisin, yet the judges now take it at the appearance of the jury. 2d. The tenant ought to begin in the giving of evidence. 3d. The jury cannot find a special verdict." Booth 98. n. u. Tender of the demy-mark is upon the swearing of the jury. Br. Droit 41. And see Chitty on Plead. 3 vol. 653. n. b. Tender of the demy-mark before the swearing of the assise is sufficient to put the demandant to shew the seisin of the ancestor: *Per Wood*, Baron, in *Hardman v. Clegg*, 1 Holt's N. P. Rep. 670. See further as to the tender of the demy-mark, *ib.* 673. n.

(195) *Ante*, pt. 1. pa. 562.

cipe quod reddat must express the vill in which the land lies, and not the hamlet only (196), but every parish is considered, *primâ facie*, to be a vill, so that the contrary must be shewn (197).

To enter more fully into a discussion of the nature of the grand writ of right might be deemed inconsistent with the object of the present treatise, I shall therefore conclude this section with earnestly recommending to the student an attentive consideration of the principles of this complicated suit, very ably illustrated in Rast. Entr., Fitzherb. Nat. Brev. and Booth's Real Actions, where the proceedings, from the summoning of the tenant (198), to the issue by the grand assise, are accurately traced; and where also much useful and interesting information is afforded as to the various process and forms connected therewith, such as the Summons, Attach-

(196) 9 E. 4. 36. 8 E. 4. 6. 34 H. 6. 18. Booth 3. But in dower it may be in an hamlet, as no certain land is demanded. So in assise, as the recovery shall be by view of the jurors. *Ib.* *Vide* as to the cases in which a view may be demanded, *Davis v. Lees*, Willes' Rep. 345 &c. Dy. 210 b.

(197) 8 East 176. And see Booth 3, (n. e.)

(198) See particularly Booth (p. 4. n. h.) for instructions as to the mode of making out a precipe for the writ, and summoning the tenant, and proclamation of summons. As to the latter *vide* also *post*, Appendix, p. 15, 16. And see the form of precipe, warrant, summons, and sheriff's return in writ of dower, 2 Saund, by Serj. Williams, 43, n. 1

ment, Distress, Default, Grand Cape, View, Essoign, Voucher, Warranty, Aid prayer (199), Default, &c. (200).

(199) *Vide* also as to aid prayer, *Onslow v. Smith*, 2 Bos. & Pul. 384. And see as to view, Br. Abr. 2d. pt. fo. 303, &c. 2 Inst. 480. *Ante*, n. 196.

(200) And see Lee's Prac. Dict. vol. 2. p. 1061, &c. 10 *Westw.* 213 &c. *Tisken v. Clarke*, 3 Wils. 419, 541, 558. *Luke v. Harris*, 2 Sir W. Bl. 1261, 1293. *Pearson v. Maynard*, 1 Taunt. 415. *Hardman v. Clegg*, 1 Holt's N. P. Rep. 657. Chitty on Plead. vol. 3. p. 635, &c. Com. Dig. tit. 'Droit.' Reeve's Hist. of the Eng. L. 1 vol. c. 7. *Ib.* c. 4. p. 172-3.

Vide also the late case of *Windle v. Ricardo*, 1 Taunt. & Brod. 17, in which the court of Common Pleas held, that an action did not lie against the sheriff, for an erroneous return of the writ of summons by the officer of the court, (who had endorsed on the writ that the four knights were duly sworn); and that the sheriff being only commanded to summon the knights, was not chargeable with negligence, because one of them did not appear when called by the officer.

SECT. VII.

Of the Fruits of Tenure; and Seignioral Franchises.

ESCHEAT.—The word *escheat* is a feudal term importing a return of tenure (201); and there can be no escheat, I apprehend, but *per defectum sanguinis* (202), that is, for default of heirs; but lands may revert to the lord *per delictum tenentis*, that is, for felony (203); but this is rather a forfeiture than an escheat (204); and extends to

(201) It is said that a foundership cannot escheat, nor be forfeited, being annexed to the blood. Br. Eschete, pl. 9; Ib. Corodies, pl. 5, cites 24 E. 3. 33, 72. But again it has been said that a foundership may come to the King by escheat. Br. Peticion, pl. 26, cites 5 E. 4. 118.

(202) *Sir G. Sands'* case, Hardr. 494. Jenk. 203, pl. 27. But see Co. Litt. 13 a. *Burgess v. Wheats*, 1 Sir W. Bl. 133 &c., 141 &c.

(203) Attainders that give escheat to the lord must be by judgment of death given in some court of record against the felon, found guilty, by verdict or confession, of the felony, or it must be by outlawry of him. Bacon's

Use of the Law, 38. 10 Vin. 143 (A. 2.) pl. 3.

(204) The stat. 25 Ed. 3. c. 2, makes this distinction between escheats and forfeitures, declaring that in the cases of *high treason* the forfeiture of *escheats* pertaineth to the King, as well of the lands and tenements holden of others, as of himself; and that in cases of *petit treason*, the escheats ought to pertain to every lord of his own fee. See Sir Martin Wright's treat. of ten. p. 117. (n. x.), who adds, "So that in the clause relating to forfeitures for *high treason*, escheats and forfeitures are plainly distinguished; inasmuch as *escheats* themselves are for such treasons

lands purchased by or descending to the party after committing the felony (205).

And in the case of high treason the forfeiture of freehold land is to the King by the common law, of whomsoever the land be holden (206), and not to the lord (207), who is considered to be deprived of his seignior, as a punishment for

"declared to be forfeited. And
 "the Lord Coke (2 Inst. 64.), ob-
 "serves this difference between
 "them, saying, that where a lord
 "is attainted of high treason, there
 "the King hath the land by for-
 "feiture, of whomsoever the land
 "is held, and not in respect of
 "any *escheat*, by reason of any
 "*seignior*. Vide Bro. tit. *Escheate*.
 "Mo. 160. Upon this differ-
 "ence we may easily account for
 "gavelkind lands being forfeit-
 "able for *treason*, though they do
 "not *escheat* for *felony*; for though
 "the lord may connive at or dis-
 "pense with all the causes of *es-*
 "cheat, (*potest dominus feloniam*
 "*remittere*. Zasius in *usus feud*.
 "cap. 10. fol. 95.), or might re-
 "mit the *escheat* itself as a perqui-
 "site of tenure; yet he could not
 "dispense with the publick laws
 "of *forfeiture*, or with offences
 "against any other person than
 "himself." And see further as
 to the distinction between *es-*
cheat and *forfeiture*, 1 Sir W. Bl.

pp. 143-4, 145, &c. in *Burgess v. Wheate*.

(205) Br. *Escheate* pl. 3, cites 48 E. 3. 2. Finch 71 b.

(206) *Ante*, n. 203. Br. *Escheate* pl. 14, cites 22 Ass. 49. Co. Litt. 13 a, cites *Nicholl's case*, Plow. Com. And see Consider. on the law of forfeit. for high treason, 4th Ed. p. 60, 65. Hale, H. P. C. v. 1. c. 23.

(207) This, since the stat. 33 H. 8. c. 20. applies to lands held in fee tail, as well as fee simple; and the forfeiture is before office found. *Dowtie's case*. 3 Co. 10. And the estate of a trustee is forfeited by attainder, as the King cannot be a trustee. Jenk. 190, pl. 2; but in such cases it is usual for the crown to regrant the estate *ex gr.* to the *cestui que trust*. Mo. 196. Vin. Abr. Uses. (C). Co. Litt. 13. a. n. 7.

It should seem that a trust of freeholds is forfeitable for high treason since the stat. 33 H. 8. c. 20. 1 Hale, H. P. C. 248.

his failing in that caution that was due to the public in the choice of his tenant (208); though of petit treason the forfeiture is to the lord (209): but even where the tenant is guilty of felony only (210), the King is entitled to the land for a year and a day, to the prejudice of the lord (211).

But if the heir in fee simple commit treason in the lifetime of his father, the lord shall have the land by escheat, and not the King by forfeiture, as the son never was seised (212).

And lands vested in the lord by attainder of felony, are not divested by a subsequent act of high treason (213).

If a tenant is outlawed of felony, and the lord enters by escheat [or forfeiture], the tenant on reversing the outlawry may re-enter, but not without a *scire facias* against the lord, as he is in by title (214).

And if after outlawry of the principal on felony, the accessory is convicted and executed, and the lord enter on the lands of the accessory for an escheat; and afterwards the principal re-

(208) Wright's ten. 119. Consider. on the law of forfeit. for high treason, p. 61.

(209) See n. 204.

(210) By which is to be understood felony punishable by death. 2 Inst. 38.

(211) Magna Charta, c. 22. 17 Ed. 2. c. 16. Staundf. Pleas of

the Crown, lib. 3. c. 30. Br. Corone, pl. 208. And see 2 Inst. 36, citing Glanv. Bract. Brit. Flet. and the Mirror.

(212) Br. Eschete, pl. 6, cites 11 H. 4. 10, 11. Co. Litt. 13 a.

(213) 3 Inst. 213.

(214) Br. *scire facias*, pl. 109, cites 8 H. 6. 2.

verses the outlawry, and pleads to the felony and is acquitted, the heirs of the accessory shall re-enter on the lord (215).

If a person is outlawed on an *indictment* (216) for felony, a conveyance pending the process, and before outlawry, will not defeat the lord of his escheat; but a feoffee might traverse the time of the feoffment, or the felony itself (217).

When a man having an estate in freehold lands for his own life, or the life of another, commits treason or felony, the whole estate, it is said, is forfeited to the crown, and no escheat to the lord (218).

A remainder or reversion in fee is capable of seisin, and may escheat, as well as an absolute fee, (219), and on the death of the tenant for life, if a stranger abates, the lord may have a writ of intrusion (220). But as the lord, by escheat is in by

(215) 9 Co. 119 b, in *Lord Saucher's case*. 3 Inst. 231.

(216) *Contra*, on *Appeal*, as the writ does not contain the time when the felony was committed. Co. Litt. 13 a. & b.

(217) 3 Inst. 230, cites 40 E. 3. 11. 7 E. 4. 1, 2. Co. Litt. 13 a, b: but on attainder upon *verdict*, a feoffee could only traverse the time. 3 Inst. 231.

(218) Bacon's Use of the Law, 40. But copyholds, whether held

in fee simple or for life are forfeited to the lord; and if intailed the forfeiture is to the lord during the life of the offender. *Ib.* And see *ante*, pt. 1. pa. 498-9.

(219) Br. Prerog. pl. 25, cites 15 H. 4. 11. Dy. 137. pl. 26, cites 3 H. 6. And the lord by escheat would be entitled to distrain for the rent reserved by a lease for life, but could not enter by force of condition broken. Co. Litt. s. 348.

(220) Br. Eschete. pl. 6, cites

title, and not by way of estate, he shall not have the benefit of a warranty made to the tenant, nor take advantage of a voucher or condition (221).

That which does not lie in tenure, as a rent charge, advowson, common, or the like, cannot escheat (222), but if the grantee die without heir, or should the grant be to a corporation, and the corporation be dissolved, the rent, advowson, &c. would be extinct (223). Yet a rent charge, advowson, common, or other thing which is not held, will be forfeited by attainder of treason or felony. (224).

And on attainder of felony the lord shall have the title deeds, though they are said not to be forfeited by such attainder (225).

11 H. 4, 10, 11. *Ib.* Intrusion. pl. 4, cites 45 E. 3, 3:—but it seems he may have the writ of escheat instead of intrusion, if he pleases. *Br. Intrusion*, pl. 7. *Ib.* Eschete, pl. 4, 6. Yet see 6 H. 7, 9. *Br. Eschete*, pl. 16, 22.

(221) *Bulst.* 164. 2 *And.* 148. *Ante*, n. 219.

(222) *Br. Eschete*, pl. 22, cites 13 E. 3. *Ib.* pl. 7, cites 11 E. 4, 82. *Ib.* pl. 9, cites 24 E. 3, 72. *Ib.* Intrusion pl. 8. *Ib.* Corodies, &c. pl. 5. *Ib.* Prerogative pl. 1.

(223) *Br. Extinguishment* pl. 2, cites 27 H. 8. 10. *Ib.* Prerogative pl. 1, cites S. C. Co. Litt. 13.

b. Dean & Canons of Windsor v. Webb, Godb. 211. 3 *Inst.* 21. And a sole corporation is equally within the rule. There are authorities, however, against a donor, and favorable to the lord by escheat. *Johnson v. Norway*, Winch 37. S. C. (*Johnson v. Morris*) Mich. 20. Jac. C. B. Hal. MSS. cites 21 E. 4. 1. 21 H. 7. 9. *Southwell v. Wade*, Poph. 91. S. C. 1 Roll. Abr. 816 A. *Vide also* n. 2. Co. Litt. 13, b.

(224) *Br. Eschete*, pl. 9, cites 24 E. 3. 72. *Ib.* Corodies, pl. 5, cites S. C. & 24 E. 3. 33.

(225) *Br. Chart. de terre*, pl. 59.

A right of action cannot escheat (226), but a right of entry may, that is, the lord I conceive may enter by virtue of the right, but cannot have a writ of escheat (227).

If a trustee of freehold land die without an heir, the lord will be entitled at law by escheat (228), and, according to the more general opinion, without being subject to the trust in equity (229). If however, a *cestui que trust* of freehold land die without an heir, or is attainted of felony, there is no escheat or forfeiture, for a *use* was not forfeited for treason or felony at common law, but

(226) Br. Eschete pl. 26. Argo. Godb. 310. *Marquis of Winchester's* case, 3 Co. 2 b. And see 10 Co. 48 a.

(227) 6 H. 7. 9. Br. Eschete pl. 16. lb. pl. 26; cites 32 H. 6. 27. Godb. 309, argo. A right of entry is forfeited to the King by attainder of high treason, but a right of action is not forfeited for treason, either at common law, or by the stat. 33 H. 8. Consid. on the law of forfeit. for high tr. p. 82.

(228) Jenk. 190, ca. 92. lb. 245. ca. 30. *Eales v. England*, Ch. Pr. 300-2. *Burgess v. Wheate* 1 Sir W. Bl. 141. See this case, Eden's Ca. Ch. 177.

(229) *Burgess v. Wheate*, sup. Harg. Juris. Exer. vol. 1. 390. And see Jenk. 190. ca. 92, where it is stated that the King or lord

by escheat cannot be seized to any use or trust, for they are in the *post* and paramount the confidence. lb. 245, ca. 30. *Ante*, n. 207. But there is now no distinction between those in the *per* and *post*, as to relief in equity, except in the case of dower, founded not upon reason but practice. 1 Sir W. Bl. 155, 162. *Vide* also Nels. Ch. Rep. 107, in *Stephen's v. Baily*. But see *contra*, *Eales v. England*, sup. *Vide* also Cart. 67. And it has been held that a mortgagor may redeem after a forfeiture by one claiming under the mortgagee. *Pawlett v. Att. Gen.* Hardr. 469. See, however, the stat. 39 & 40 Geo. 3. c. 88. s. 12, which seems favorable to the opinion that the King is not bound to execute a trust of lands which escheat.

the trustee shall hold the land discharged of the trust (230).

But in copyhold cases, where the lord is privy to the creation of the trust, a very powerful argument suggests itself for the interposition of equity in favor of the *cestui que trust* in the former instance, and of the lord in the latter (231).

A devise by a person who afterwards dies without an heir will prevent an escheat (232); and a power given to executors to sell the land, will bind it in the hands of the King by escheat (233).

But the lord may enter for an escheat upon the death of a disseisee without heir (234), unless the disseisor should have aliened by feoffment, for then the lord would have a tenant by title (235).

It follows that a disseisee may enter on the lord by escheat, unless there has been a descent of the

(230) See Jenk. as in n. 228-9. *Sir G. Sands' case*. Sid. 403. S. C. Nels. Ch. Rep. 131. S. C. 3 Ch. R. 33. Br. feoffments to uses pl. 34, cites 5 E. 4. 7. Cary 14, 15. *Marquis of Winchester's case*, ante. Hargr. Juris. Exer. vol. 1. p. 387 &c. And see 1 Sir W. Bl. 184, in *Burgess & Wheate* as to an equity of redemption. Vide also *Middleton v. Spicer*, 1 Bro. C. R. 202-3; and Mr. Hargrave's note thereon in 1 vol. Juris. Exer. p. 393.

As to forfeiture for high treason by *cestui que trust* of freeholds since 33 H. 8, see ante, n. 207.

(231) But see 3 Ves. Jun. 752. 1 Stra. 454. Vide as to an equit-

able escheat of copyholds, ante, pt. 1. pa. 463-4.

(232) 1 Roll. Rep. 214, cites 48 E. 3. 3. And an escheat is prevented, even by the title of a moiety of an heir. 2 P. W. 614, in *Eastwood & Vinke*.

(233) *Manning v. Andrews*, 1 Leo. 260. And see 10 Mod. 361-2, citing 49 E. 3. 16.

(234) Br. Ent. Cong. pl. 63, cites 27 Ass. 32.

(235) Co. Litt. 268. b. [Or grants and renders the land by fine, Fitz. Ent. Cong. pl. 38; but this I apprehend, presupposes a bar by non-claim.]

land, either from the lord, or from the disseisor (236); and the law is the same upon an ordinary alienation by a disseisor, and the death of the alienee without issue (237).

The lord after recovery by writ of escheat cannot avoid a term of years created by a tenant, who subsequently to the lease dies without an heir, or is attaint of felony, but will take charged with the term (238).

And any avoidable estate, as a feoffment by an infant or person *non compos mentis* shall bind the lord by escheat (239). So also a lease by husband seised in right of his wife, made without the concurrence of the wife (240). So again as to an alienation by the husband by fine, where the wife afterwards dies without an heir (241).

(236) Br. Ent. Cong. pl. 92. And see 10 Mod. 862, argo. And if the lord would plead a release made by the disseisee to the disseisor, he must shew it. 10 Co. 93. in *Dr. Leyfield's case*.

(237) Co. Litt. 246. a.

(238) *Per Coke*, 8 Co. 45, in *Whittingham's case*. Br. Extinctionment. pl. 23, cites 3 Ass. 1. lb. *Presog.* pl. 180, cites 11 H. 6. 7. *Needham & Poole*, Dy. 115 b. marg.

The lord by escheat is entitled to a term attendant on the inheritance. *Thruston v. Att. Gen.* 1 Vern. 340.

(239) 7 Ca. 7 b, in the *Earl of Bedford's case*, 1 Roll. Rep.

402. 8 Co. 42 b. 44 a, in *Whittingham's case*, (*sup.*) 4 Co. 125, in *Beverley's case*. But if an infant makes livery by attorney, the feoffment is not voidable, but *ipso facto* void. *Beverley's case*, and *Whittingham's case*, *sup.*

(240) *Per Coke*, Ch. J. 1 Roll. Rep. 402.

(241) *Per Hobart*, Ch. J. Hob. 961. But it should seem that the lord is not bound by every estoppel, for if a person were to take a lease by indenture of his own lands, though binding upon him, the lord would not be bound by it, in case of an escheat. 1 Leo. 158, ca. 924.

And I apprehend that an escheat of freehold lands will not alter the course of descent, where the law takes notice of a peculiar custom, as in gavelkind, and borough english tenure (242), even if the escheat were to the King, and the lands were afterwards regranted by him, reserving other services (243).

The reader is here reminded that though gavelkind lands are forfeited for high treason, yet they do not escheat for felony, nor is the King entitled to year and day waste (244): But this is only where the party submits to the judgment of the law, and

(242) *Custum. of Kent*, cited *Rob. Gav. by Wils.* 85. *Somn.* 144-9. 14 H. 4. 9 b. 11 H. 7. 25 b. *Br. Custom* 19; *Extinguishm.* 14, cites 14 H. 4. 2, 3. But see *contra per Windham*, J. 1 Keb. 505. *Gouldsb.* 106. *Lamb*, 594 *Dub.*

(243) 2 *Bac. Abr.* 243. (G). *Lamb. Peramb.* 591-3. *Dal.* 23. 3 Keb. 216. 1 *Sid.* 138. 2 *Sid.* 83. And see *Doe d. Lushington v. the Bishop of Landaff & others*, 2 N. R. 508. Nor would the customary descent be altered on an escheat of copyhold lands, which were afterwards re-granted by the lord to hold by copy. *Ante*, pt. 1. pa. 612. (n. 12); but if copyholds which escheat are not re-granted, they merge in the freehold, or rather the copyhold interest is extinguished, the two tenures being incompatible. *Ib.* p. 43, 610.

See 8 H. 6. c. 16, and 18 H. 6.

c. 6, preventing grants of land seised into the King's hands before escheators unless the King's title be found, and until a month after the return of the inquest in the Chancery or Exchequer, except to the party grieved and who tenders his traverse, and which are held to extend to an escheat where no immediate tenure of the crown is found. *Doe & Redfern*, 12 *East* 109. In this case it was also held, that the 8th s. of 2 & 3 *Ed.* 6. c. 8, avoids an inquisition not finding the tenure, equally with one alleging total ignorance. *Semble*, that the King's right shall not be presumed against a mesne tenure, without office found. *Ib.*

(244) *Ante*, n. 203. And see *Lamb.* 634. *Consid. on the law of forfeit. for high treason*, p. 61-2. *Rob. Gav. by Wils.* p. 288-9.

does not hold in the case of outlawry for felony (245).

If an alien purchase lands and die, the law casts the inheritance on the King, who upon office found shall have them; and if an alien has issue a son and is made denizen, and afterwards has another son, and shall purchase lands and die, the lands will not escheat, but shall go to the youngest son (246). If, however, an alien be made denizen, and shall purchase lands and die without issue, the lands will escheat to the lord (247).

In enforcing the lord's right by escheat, it is to be recollected that when lands are held by distinct services, there must be distinct writs of escheat (248).

It is also proper to notice that by particular acts, the lord may be barred of his writ of escheat, as by a fine *come ceo* levied with proclamations in the court of Common Pleas; or by acceptance of fealty, or avowing for rent in a court of record, or accepting rent from the feoffee or heir of a disseisor (249); but the acceptance of rent from the disseisor himself would be no bar to the lord by escheat (250); nor perhaps from the feoffee or heir, if received in ignorance of the feoffment or descent; the acceptance of rent being an act of an ambiguous nature (251).

(245) Rob. Gav. by Wils. p. 290. Br. Eschete, pl. 18, cites 7 E. 6.

(246) Br. Eschete, pl. 28. 2 Bulst. 153.

(247) Co. Litt. 2 b. (250) See Co. Litt. and Br.

(248) Br. Eschete, pl. 13, cites Abr. as in n. 249.

21 H. 7. 39. (251) *Doe & Hellier*, 3 T. R.

(249) Co. Litt. 268. a & b. 171. *Ante*, pt. 1. pa. 526-7.

FELONY DE SE.—It frequently happens that the lord of a manor is entitled by grant from the crown to the goods and chattels of every person convicted of *felo de se* (252) within the particular manor, which naturally suggests the propriety of treating briefly of this subject, under the head of the present section.

A person who in possession of the powers of reasoning lays violent hands on himself, and is wilfully (253) the occasion of his own death, is termed a *felo de se*, but in common parlance it is considered as a perfectly distinct offence from the murder of another (254), and from other felonies; so much so that the grant of *bona et catalla felonum*, would not pass the goods and chattels of a *felo de se* (255).

But no person under the age of discretion, or

(252) It is almost needless to notice that the goods and chattels of the offender are totally forfeited by conviction of felony in general, and on conviction of high treason or misprision of treason, petit treason, manslaughter, and even of excusable homicide, of petit larceny, and by outlawry of treason or felony, standing mute when arraigned of felony, &c. &c.

(253) It is said too, that he who is maliciously attempting to kill another, happens to kill himself, is a *felo de se*, being the only agent. 1 Hawk. P. C. c. 27

a. 4. 3 Inst. 54. 3 Bac. Abr. 142 (A). 4 Bl. Com. 189.

(254) Stam. P. C. 183, &c.

(255) *The King v. Sutton*, 1 Saund. 273. S. C. 1 Sid. 420. S. C. 2 Keb. 526, 533. And see the pleadings in S. C. Lex. Man. App. pt. 20. Vide also 1 Vent. 32. 4 Leo. 6. ca. 28.

So a grant of goods and chattels of felons, or felons of themselves, will not entitle the grantee to the debts due to such felons. *The King v. Sutton*, *sup.* And see *Ford & Sheldon's case*, 12 Co. 1-b. 2 a. *The Mayor of South-*

being *non compos mentis* (256), can be *felo de se*, even though, in the latter case, the person becomes of sound mind before he dies (257).

Neither is a person who designs to commit suicide deemed a *felo de se*, unless he dies within a year and a day after the act (258).

A *felo de se* forfeits all chattels, real as well as personal, belonging to him at and after the time of committing the act, or of which he may be possessed jointly with or in right of his wife (259). And the inquisition having relation to

ampten v. Richards, 1 Sid. 142. *Per Shute*, Ow. 155. 1 Leo. 202. *Lord Northampton v. Lord St. John*, 2 Leo. 56. 1 Vent. 32. But in 2 Roll. Abr. 195. (E) pl. 1, it is held, that if the King grant certain liberties, and (among other things) grant *omnia bona et catalla felonum de se*, within such a place, it shall pass obligations, specialties, and debts due to the felon; for though in other cases a grant of *omnia bona et catalla* by the King, will not pass specialties and debts, yet in the grant of a liberty it will; see also Com. Dig. Waife (C). So by a grant of goods and chattels of felons of themselves, the grantee shall have such felon's ready money. 2 Shp. 133, *Anon.*

(256) It has been thought that a person who kills himself must be *non compos mentis*, on the suppo-

sition that no man in his senses could do a thing so repugnant to nature and reason, 3 Mod. 100; but in Hawk, Pl. C. c. 27. s. 3, this notion is justly exploded. And see 4 Bl. Com. 189.

(257) Plow. Com. 260. Fitz. Abr. tit. 'Coron.' pl. 412, 244, cites 8 E. 2. 22 E. 3. 3 Inst. 54.

(258) 3 Inst. 54.

(259) Plow. Com. 260, in *Hales v. Petit*. 3 Inst. 55. 1 Hale, H. P. C. 413. It has been said that *choses in action* to which a *felo de se* is jointly entitled with another are wholly forfeited, with the exception of the case of two joint merchants; *contra*, as to joint personal chattels *in possession*. 8 E. 4. 4. Plow. Com. 259. b. 3 Inst. 55. 1 Sir T. Raym. 7. But again it has been said, that he shall forfeit a moiety only of such joint chattels

the act of suicide, all intermediate alienations are avoided (260).

But the act of suicide does not work a corruption of blood, so that the lands of inheritance of a *felo de se* are not forfeited, nor is his wife barred of her dower (261).

The forfeiture of the goods and chattels of a *felo de se* is to the King (262), or his lawful grantee (263), and they cannot be claimed by

as may be severed, and nothing as executor or administrator. Hawk. P. C. c. 27. s. 7. 3 Bac. Abr. 143 (C).

Equity will relieve against a forfeiture of a chattel by a trustee, *King v. Cooper*, Hardr. 176; even against the King, upon the stat. of 33 H. 8. c. 39; but the application should be to the Court of Exchequer, as a court of revenue. Ib. 176, 469. 1 Vern. 439. 2 Atk. 223.

(260) Plow. Com. 260. 5 Co. 110.

(261) Plow. Com. 261. 3 Inst. 55. Britt. c. 7. 1 Hawk. P. C. c. 27. s. 8. Hale, H. P. C. 413.

(262) Where the forfeiture belongs to the crown it is now usual for the King to make a warrant under his sign manual, on a memorial being presented by a creditor of the deceased, authorizing the Ecclesiastical Court to grant

letters of administration to the memorialist; and the administrator would be answerable for the debts of the deceased, and could not dispute the validity of the administration, against his own act. *Megitt v. Johnson*, Dougl. 542. Serjt. Williams' ed. of Saund. 1 vol. 272, a. n. 1.

(263) *Ante*, n. 255. Whether a grant from the crown of the chattels of all felons of themselves will pass the chattels of a *felo de se*, claimed under a franchise forfeited by attainder of treason after such grant, see the *Bishop of Chester v. Webb*, Dy. 107 b.

By the stat. of 4 & 5 W. & M. c. 22, it is enacted, that no corporation, lord or lords of manors, or other person or persons, having grants by charter, or other good conveyances, who have inrolled, and had the same allowed in and by the court of B. R., shall be

prescription, as in the case of estrays, waifes, wreck, &c. (264).

It would seem that such goods are not liable in the hands of the King, to the debts of the *felo de se*,

compelled to plead the same to any inquisition returned by any coroner; and that if there be any corporations, lords of manors, or other persons, who have such charters, or grants from the crown, for felons' goods, deodands, and other forfeitures, such corporations, &c. shall not be compelled to inrol their whole charters and grants, but bring in the same to the clerk of the crown of the said court, who shall inrol so much thereof as may express and set forth the grants of such felons' goods, deodands, and forfeitures, and no more; and from and after such inrolment, no corporation, &c. or other persons, grantees of such goods or forfeitures, shall be compelled to plead the same in the said court, to any inquisition thereafter filed therein, touching any goods found thereby: and the act inflicts a penalty upon any clerk of the crown who shall issue out any process against any grantees of such felons' goods, deodands, and other forfeitures, after such inrolment or entry. See *Lex. Man.* p. 74. *Vide* also the following note in *Serjt. Williams' ed. of Saund. Rep.* p. 272. "Since the passing of this act, [4 & 5 W.

" & M. c. 22. *sup.*] the coroners
 " have discontinued returning
 " their inquisitions into the K. B.
 " If a man be found *felo de se* by
 " the coroner's inquisition, the
 " jury ought also to find whether
 " he had any goods and chattels
 " at the time he committed the
 " felony, or not; and if he had
 " any, to specify the same in an
 " inventory annexed to the inquisition; the form may be seen in
 " the books of practice of the
 " crown, Crown Circ. Assist. 90
 " &c. The goods may then be
 " seized for the use of the King
 " or his grantee; and if trespass
 " be brought against the grantee
 " for such seizure, he must in his
 " justification set out the grant of
 " goods of felons of themselves,
 " and the inquisition before the
 " coroner finding the deceased to
 " be such a felon, by which he
 " forfeited his goods, and that
 " those in question were his. If
 " the coroner's inquisition omit
 " finding the goods of the *felo de se*,
 " that, it seems, may be supplied
 " by a writ of *melius inquisitionem*
 " directed to the sheriff,
 " 1 H. H. P. C. 415."

(264) *Foxley's case*, 5 Co. 109 b.
 Co. Litt. 114 b.

nor indeed in the hands of the grantee, except to satisfy debts due to the crown (265).

Nor are the goods and chattels forfeited until it be found by the coroner's inquisition, (upon the oath of twelve men), that the party is *felo de se* (266); which finding must be *super visum corporis* (267).

The coroner, who is a judicial officer (268), must be present at the view of the body, or the inquisition will be void (269); and he is at such view to administer the oath to the jury, *super visum corporis*. Doubts have been entertained whether a coroner can act by deputy (270); and as it has been a common practice to appoint more than

(265) 4 Leo. 6. ca. 28.

(266) Plow. Com. 260. *Rex v. Ward*, 1 Sid. 150. S. C. 1 Keb. 548. But see S. C. 1 Lev. 8, in which it is said that the goods were held to be forfeited to the King, by the act itself, before inquisition; but this seems to be a mistake, *vide* n. 1. to 1 Saund. 362.

(267) 3 Inst. 55. 4 Inst. 271. 1 Hale H. P. C. 414, 415. 1 Hawk. P. C. c. 27. s. 11, 12.

(268) But as no other officer is recognised by the law in an inquisition of this nature, it is the duty of the coroner to summon the jury, so that he acts also in a ministerial character. *Vide* also 4 Inst. 271.

(269) 1 Hawk. P. C. c. 27. s. 11, 12. 2 ib. c. 9. s. 23-4. 2 Hale, H. P. C. 58. See the act of 4 Ed. 1. st. 2. *Vide* also *Rex v. Ferrand*, (the *Oldham* case) 3 Barn. & Ald. 260; 1 Chitty K. B. 745; in which the court of B. R. refused to grant a mandamus to compel the coroner to proceed in the enquiry of the cause of death, the whole proceeding being illegal and extra-judicial; for the jury had first seen the body, and were then sworn by the coroner's clerk, and subsequently were sworn by the coroner, but not *super visum corporis*.

(270) *Rex v. Ferrand, sup.* And see *Crompt. Just.* 227. 2 Hale H. P. C. 58.

one coroner in a county, there would seem to be some grounds for this doubt (271).

If the body cannot be found, the coroner has no jurisdiction, but a presentment may be made, as well in that case, as upon the coroner's omission, either before the justices of oyer and terminer, or before the justices of the peace, who have power by their commission to enquire of all felonies; or the presentment may be in the King's Bench, if the offence be committed in the county where that court sits (272).

It was formerly supposed that the executors or administrators of the deceased, could not traverse the coroner's inquisition (273), though they should have a traverse to an inquisition by justices of the peace for the county (274): but it should seem to be fully settled that the coroner's inquisition may be removed by the executors or administrators of the deceased into the K. B. by *certiorari*, and there traversed (275).

(271) But see *ex parte Parnell*, 1 Jacob & Walk. 451, where a coroner had acted by deputy for twelve months, and no notice was taken by the court of its illegality; and see 3 Barn. & Ald. 264, in *Rex v. Ferrand*.

(272) *Foxley's case*, *ubi sup.* *Stanlake's case*, Vent. 182, 1 H. P. C. 414. 2 ib. 589. 1 Hawk. P. C. c. 27. s. 12. 3 Inst. 55.

But the Grand Jury have no power to find such an inquisition, under a general charge from the judge of assise, *Rex v. Kilmington*, 1 Burr. 17.

(273) 3 Inst. 55, cites Stanf. Pl. Cor. 183. d. And see Br. Coron. pl. 151. Ib. Travers per sans ceo, pl. 229, citing 8 E. 4. 4. 3.

(274) 3 Inst. 55.

(275) 1 Hawk. P. C. c. 27. s.

No traverse, however, can be taken to an inquisition not finding the party *felo de se*, as if the inquisition find that he was *non compos mentis* (276):—yet, if it should appear that the finding in such a case, were obtained by any indirect proceedings of the coroner, the court of B. R. would grant a *melius inquirendum* directed to the sheriff or to special commissioners, who are to proceed on the testimony of witnesses, but not *super visum corporis* (277): It is, however, the practice not to grant a

12. 2. ib. c. 9. s. 52. Lord Hale also was of opinion that the inquisition was traversable. Hal. H. P. C. 416, 417, cites *Barclay's* case, B. R. 1658; and *Page's* case in the Exch. P. 45 E. 3. And see *Rex v. Storke*, 3 Keb. 800, citing *Rowell's* [or *qy. Aldenham's*] case. *Ripley's* case, T. Jones, 198. S. C. Skin. 45. The *Queen & Clerk*, Salk. 377. S. C. 7 Mod. 16. 2 Lev. 141, in the *King v. Packer*. The *King v. Aldenham* (or *Alder-man*), ib. 152. 3 Keb. 564-6, 604. The *King v. Stanlake*, 2 Keb. 859. S. C. Vent. 181. *Vide* also Vent. 239, 278.

(276) *Rex v. Storke*, *sup.* And see Anon. 1 Vent. 239. 1 Saund. Rep. 363. n. 1. by Serjt. Williams. But see Br. Coron. pl. 151.

Although a coroner returns the inquisition to B. R. finding the de-

ceased *non compos*, yet he is not obliged to return the depositions, unless something should be depending before the court to render it necessary, 2 Str. 1073.

See further as to the duty of a coroner, 4 Inst. 271; 2 Hawk. P. C. c. 9; 2 Hal. H. P. C. c. 8; the stats. 4 Ed. 1. st. 2, & 25 Geo. 2. c. 29, furnishing additional powers for the removal of coroners in cases of extortion, neglect of duty or misdemeanor; *ex parte Parnell*, *ubi sup.*; 7 T. R. 52; and 2 Barn. & Ald. 203.

A coroner has been committed for falsely returning an inquisition of *felo de se*, the party being lunatic. *Rex v. Wakefield*, 1 Str. 69.

(277) 2 Hawk. P. C. c. 9. s. 53. *Rex v. Bunney*, 1 Salk. 190. S. C. 3 Mod. 238. *Rex v. Hethersal*, 3 Mod. 80. And see Cro. Eliz. 371.

melius inquirendum when the inquisition is traversable (278), nor unless a manifest misbehaviour in the coroner is established by affidavit (279).

It appears that if the goods of a *felo de se* are in the possession of any person who refuses to deliver them up, the King may prefer an information in the Exchequer, in the nature of trover and conversion; and that in case of debts being due to the deceased, the King may either proceed by information in B. R., as in the case of the *King v. Sutton* (280), or in the Exchequer, by his Attorney-general, and that the latter is the most usual practice (281).

And that a grantee of the chattels of a *felo de se*, may bring an action of trover for the recovery of goods detained by a third person; and may

And the omission to find the goods of the *felo de se*, may be supplied by a writ of *melius inquirendum*. Hale H. P. C. 415. 2 Keb. 859, in *Stanlake's case*. *Ante*, n. 263.

(278) *Ripley's case*, T. Jones 198. Yet upon a case clearly made out against the coroner, the court of B. R. would set aside the inquisition. *Barclay's case*, and *Stanlake's case*, *ubi sup.* Anon. Vent. 352. In *Stanlake's case*, 1 Mod. 82, Newdigate said, "that in the case of *Miles Bartly*, [*Barclay*] the enquiry was not filed, and that that was the reason

"why a new one was granted."

(279) *Rex v. Hethersal*, *Rex v. Bunny*, and *Ripley's case*, *ante*. 1 Vent. 182, 352.

(280) 1 Saund. 273 (*ubi sup.*): In this case the reporter suggests that the information ought to have averred the fact, that the party was found *felo de se*, and then to have shewn the substance of the inquisition, and concluded with a *prout* &c. And see 2 Lutw. 1342. But this does not seem to be necessary, see N. 7 to 1 Saund. 275 a.

(281) 1 Saund. 272 a. n. (1) by Serjt. Williams.

have a *scire facias* for debts of record, or an action of debt for any other debt due to the deceased (282).

As the goods of a *felo de se* are not forfeited until inquisition found, the forfeiture is saved by a pardon of the offence before such finding (283); but a general pardon after inquisition, without words of restitution, will not revest the property in the administrator of the deceased, though it will operate as a release of a debt which the King might otherwise have claimed (284).

(282) Ib. Serjt. Williams adds,
 “ in which action it is necessary
 “ to state in the declaration, the
 “ nature of the debt, the grant of
 “ such felon’s debts to the plain-
 “ tiff, or some of his ancestors;
 “ and the inquisition before the
 “ coroner, whereby an action, &c.
 “ Brownl. Rediv. 181. Asht. 205.
 “ and if the debt arises on a bond
 “ or other specialty, it seems pro-
 “ per to aver, that the deceased
 “ had such bond or specialty in
 “ the place, at the time he killed
 “ himself. The defendant in his
 “ plea must deny the debt to be
 “ due to the deceased, and there-
 “ fore, if the declaration states that
 “ the defendant was indebted to
 “ the deceased by bond, he must
 “ plead *non est factum*; if on a
 “ simple contract, *non assumptit*,

“ &c.; if he says *nil debet* to the
 “ plaintiff, he admits that he was
 “ indebted to the deceased, and
 “ all that will be incumbent
 “ for the plaintiff to prove, is,
 “ that he is a grantee of such
 “ goods; and the defendant will
 “ not be permitted to give any
 “ other evidence but payment to
 “ the plaintiff.”

(283) *Rex v. Saloway*, 3 Mod.
 101. *Rex v. Ward*, 1 Sid. 150. S.
 C. 1 Keb. 548. But see S. C. 1
 Lev. 8. 1 Keb. 66.; *ante*, n. 266.
 See also *Lock v. Etherington*, 1
 Sid. 264.

(284) *Toomes v. Etherington*,
 1 Saund. 361, S. C. 1 Lev. 120;
 1 Sid. 167. 1 Keb. 628. And
 see the pleadings in this case,
 Lex. Man. App. ca. 21; 1 Saund.
 352 b. *Rex v. Saloway*, *sup.* Vide

The coroner's inquest must shew with certainty the nature of the felonious act, and describe the wound, and conclude that it was the cause of the death (285), *sic seipsum murdravit*, (286), or it will be quashed:—but if it be full in substance, the coroner may be served with a rule to amend a defect in form (287): So, where it was found that *G. seipsum felonice submersus fuit*, but it was not said, that he *threw himself into the water*, nor did the inquisition conclude with, ‘*and so he died*,’ the court ordered the inquisition to be amended, the substance, namely, *felonice submersus fuit*, being found (288).

also 5 Co. 110 b, in *Foxley's case*.
2 Mod. 58, in *Rex v. Turvil*. 3
Mod. 242-3, in *Rex v. Johnson*.
2 Hawk, P. C. c. 37. s. 54.

(285) The *Queen v. Clerk*, 1
Salk. 377. S. C. 7 Mod. 16. Lex.
Mam. 83. ca. 12. And see Anon.
12. Mod. 112.

In the above case of the *Queen & Clerk*, Holt, C. J. held, that a coroner need not go *ex officio* to take the inquest, but ought to be sent for; that to bury the body without sending for the coroner was a misdemeanor, and that the body might be dug up again within a reasonable time, and so as not to produce infection. And see 2 Hal. H. P. C.

58. But this should be with leave of the court of B. R. *Barclay's case*, *ubi sup.* 1 Str. 167, 533.

(286) Inquisitions have been quashed for omitting this conclusion. *Rex v. Aldenham* (or *Alderman*), 2 Lev. 152. S. C. 3 Keb. 604. 1 Hawk. P. C. c. 27. s. 13, 14. But it would not seem to be essential. See *Hales v. Petit*, Plow. 255. a. *Rex v. Warner*, 1 Keb. 66. The *Queen v. Clerk*, *ubi sup.*

(287) *Rex v. Harrison*, 1 Sid. 225. 1 Hawk. P. C. c. 37. s. 15.

(288) *Rex v. Glover*, 1 Sid. 259. S. C. 1 Keb. 907. And see *Rex v. Saloway*, 3 Mod. 100.

DEODANDS.—Deodands (which sometimes also belong to the lord of the manor by grant from the crown), are defined to be *omnia quæ moveant ad mortem* (289), and have been supposed to have originated in the notion which our ancestors had of purgatory; for when a person came to a sudden and untimely death, without having time to confess and be absolved by the priest, and to receive the *extreme unction*, that thing which had been the occasion of his death was given to God, from whence 'tis called a Deodand; but it was a gift to the Church, to be distributed by the priests in charities to almsmen, to pray the soul of the deceased out of purgatory (290).

It is the duty of the coroner to enquire not only of the death of man, but of *deodands*, wreck of the sea, and treasure trove (291); and nothing

(289) Lex Man. 72. Bract.
l. 3. c. 5. 122 a. Hawk. Pl. C.
66-7. c. 26. s. 6.

(290) Lex Man. 72. Lord Coke's definition of deodands is in these words, "When any moveable
" thing inanimate, or beast animate, do move to, or cause the
" untimely death of any reasonable creature by mischance in
" any county of the realm (and
" not upon the sea, or upon any
" salt water), without the will,
" offence, or fault of himself, or
" of any person; they being so

" found by lawful inquisition of
" 12 men, being *pretium sanguinis*,
" the price of blood, are forfeited
" to God, that is to the King,
" God's lieutenant on earth, to be
" distributed in works of charity
" for the appeasing of God's
" wrath." 3 Inst. 57.

Being founded in superstition rather than on principles of sound reason and policy, the Court of King's Bench sanctions the finding of as small a sum as possible. Post. Cr. L. 266. 2 Barnard. 82.

(291) 4 Inst. 271.

can be forfeited as a deodand till found by such inquest, to have been the occasion of death (292); but after such inquisition the sheriff is answerable for the value of the thing forfeited, and may levy the same on the town where it fell, so that the inquest ought to find the value of it (293).

It should seem that the inquisition has relation to the death, and that the forfeiture cannot be saved by any intermediate alienation (294); therefore where the finding by the inquest was eleven months after the seizure, such after-finding was held to be a good justification in trespass against the officer (295). But nothing is forfeited where the party receiving an injury does not die within a year and a day (296).

The right of property in deodands cannot be claimed by prescription, but is in the King, or such lords of manors and others as have grants thereof inrolled in the Crown Office (297); and when forfeited to the King they were formerly disposed of for some charitable, or, perhaps, superstitious uses, by the King's chief Almoner; but they are now appropriated as part of the casual revenues of the Crown (298).

(292) *Foxley's case*, 5 Co. 110

b. 2 Bac. Abr. 294.

(293) Hawk. P. C. c. 26. s. 8.

5 Co. 110 b, in *Foxley's case*. 1 Hale H. P. C. c. 32. p. 419.

(294) Arg. Plow. Com. 260. b, in *Hales v. Petit*. 2 Bac. Abr. 294. Hawk. P. C. c. 26. s. 7.

(295) Keilw. 68 b.

(296) Hawk. P. C. c. 26. s. 7.

(297) Co. Litt. 114 b. See extract from 4 & 5 W. & M. c. 22, ante, tit. *Felo de se*.

(298) Lex. Man. 72. Molloy, 225. c. 1. s. 13. Fost. Cr. Law, 265-6.

It was an ancient rule that where a person within the age of discretion, viz. fourteen years, was killed by an ox, horse, or the like, the animal was forfeited as a deodand; but that if the death were attributable to the absence of discretion, as if it were occasioned by a fall from a horse which he was incapable of managing, then there was no deodand (299):—But this distinction no longer prevails (300).

All the ancient authorities are agreed that in *aqua dulci* a vessel or boat may become a deodand, but that in *aqua salsa*, even if it be an arm of the sea within a county, there can be no deodand, because of the perils to which persons are exposed by winds and tempests (301). The Rolls of Parliament furnish numerous instances of petitions founded on the latter distinction (302), which, however, would appear to be a principle of common law (303).

Consistently with this diversity it was resolved upon a trial at bar, that a ship lying at Redriff in Kent, which at low water turned over, and occasioned the death of one of the shipwrights at

(299) 8 E. 2. tit. Coron. 389.
3 Inst. 57.

(300) 1 Hawk. P. C. c. 26.
s. 4.

(301) Bract. l. 3. c. 5. 122 a.
3 Inst. 57. 1 Hal. H. P. C. 422,
423-4. Hawk. P. C. c. 26. s. 6.
2 Molloy 225. c. 1. s. 13.

(302) 51 E. 3. number 73.
1 R. 2. nu. 106. 4 R. 2. nu. 33.

1 H. 5. nu. 35. Prynne's Abr. of
Cott. Rec. 150, 164, 192, 537.

3 Inst. 58.

(303) 3 Inst. 58.

work under her, was a deodand to Lord Salisbury, the lord of the manor (304).

The above rule that *omnia quæ moveant ad mortem sunt deodanda*, has been of late years much relaxed, for though formerly, wherever the thing which was the occasion of a person's death was in motion at the time, not only that part which was the immediate occasion of the death was forfeited, but also all things moving together with it (305); yet at this day if a man be killed by the wheel of a coach going over him, the wheel *only* is a deodand to the King or the lord of the manor, as being the only immediate cause of the death; and the value set by the coroner's in-

(304) 2 Molloy 236. c. 1. s. 13.

(305) See the case of the lord of the manor of *Hampstead*, 1 Salk. 220, where a cart endeavouring to pass a loaded waggon was driven on a bank and overturned, and a person in the cart was thrown under the wheels of the waggon and killed, and Pollexfen, Ch. J. & Gregory, to whom the point was referred on the Home Circuit, gave their opinions that the cart, waggon, and all the horses were deodands, as they all moved *ad mortem*. In this case the Ch. J. at first doubted whether the cart was a deodand, but is reported to have grounded his opinion on the re-

collection of a case where a man was thrown by his horse in a river (but not by the violence of the stream), and carried by the stream to a mill, and there killed by the wheel, and both horse and wheel were forfeited. *Vide* also 1 Hale's H. P. C. 420, citing 8 E. 2. coron. 308, 408; 3 E. 8. coron. 336, 342, that where a cart fell upon or ran over a man and killed him, both cart and horses were forfeited; and where Hale also notices that if the timber which hung a bell fell and killed a man, the timber and bell were both forfeited; but see *contra*, *Rex v. Crosse* and another, 1 Sid. 207. *Post*, 765.

quest on the wheel or other thing forfeited, is taken in lieu thereof (306).

Apart from the natural influence of the superstition on which I have shewn the deodand to be founded (307), it would be difficult to account for this singular practice of distinguishing between the wheel of a vehicle and the body to which it is attached, the weight of which body may be deemed to have moved to the death in a far greater degree than the action of the wheel; and for which reason it is said, that where a thing *not in motion* causes a person's death, that part only which is the immediate cause is forfeited, but that if a man be killed by a bruise from a waggon wheel, being *in motion*, the loading also would be forfeited, because the weight thereof made the hurt the greater (308).

It is quite clear that when a person is killed by a fall from a carriage, or from a horse, the carriage or horse is a deodand (309); but there is this distinction, namely, that if a man riding through a river is thrown *by the violence of the stream* and drowned, then the horse or carriage is not considered to have moved to the death, and shall not be forfeited (310).

(306) *Rex v. Rolfe*, Fost. Cr. Law, 266. *Rex v. Grew*, Say. 249. *Ante*, n. 293.

(307) *Ante*, p. 760. *Ib.* n. 290.

(308) Hawk. P. C. c. 26. s. 6. So it is said that a ship, by a fall from which a man is drown-

ed in fresh water, shall be forfeited, but not the merchandize therein, because they no way contribute to his death. *Ib.*

(309) Hawk. P. C. c. 26. s. 3, 4. 1 Hal. H. P. C. 420.

(310) Lord Chandos' case, Cro.

And when a person is killed by the fall of part of the loading of a waggon or cart, the part only which fell, and not the whole of the load, is a deodand (311).

It is immaterial to whom that which is the immediate cause of death may belong, therefore if A. kill B. with the weapon of C., the weapon is a deodand, although there be no blame attaching to C. (312).

Whatever forms part of, or is affixed to, the freehold cannot be forfeited as a deodand, unless severed before the accident occurs (313):—So that if a man be killed by the sail of a windmill, neither the sail, nor the linen affixed to it shall be forfeited (314).

So also if a door or gate cause the death of any person, it will not be a deodand (315). So again, if a man be hanged by a bell rope in a church, the better opinion is that the bell shall not be forfeited (316).

Jac. 483. S. C. Poph. 136. S. C.

(the *King v. Lord Cavendish*),

2 Roll. Rep. 23. S. C. cited 1

Salk. 220. And see Poph. 136.

(311) Fitz. Forfeiture, pl. 20.

And see Jenk. 64. pl. 21. 1 Sid.

207.

(312) Br. Forfeiture de terre,

pl. 112, cites Doct. & Stud. lib.

2. c. 51. f. 157.

(313) Hawk. P. C. c. 26. s. 5.

Sid. 207.

(314) Sid. 207.

(315) *Ib.*

(316) *Ib. Azminster Parish*

case. S. C. 1 Lev. 136; Lord

Raym. 97. And see 6 Mod. 187,

in the *Queen v. Wheeler*. Hawk.

P. C. c. 26. s. 5.

If a man falls from a hay rick and is killed, it has been said (but not adjudged) that the rick shall

be forfeited. Hale, H. P. C. 422,

cites 3 E. 3. coron. 348.

ESTRAYS.—An estray is any *beast* not being wild, found wandering within some lordship or manor, without authority (317): And swans or cygnets may be taken as estrays (318), but no other fowl (319).

When no one can make title to estrays, called *animalia vagantia* (320), the law gives them to the King, or to lords of manors, claiming under a grant from the crown, or by prescription (321), in order that the cattle may not perish.

Within a convenient time, of which a court of law is to adjudge (322), and properly at the next market-day of the nearest market-town (323), the

(317) If persons have commonable rights within the manor, the lord is to take notice whether the beasts are beasts of the common or not, having the mark of the commoner. Br. Estray, pl. 3. S. C. (*Sir John Tiptoft's case*) 7 Co. 16 b. And by Kitch. 79. "one cannot take the King's beasts for a stray, though they were within the manor by two years, 39 Ed. 3. fol. 4." And see Fitz. Abr. Estray, pl. 3. 10 Vin. 487-8.

(318) 7 H. 6. 27, 28. Kitch. 79. Fitz. Bar, pl. 6. Br. Double Plee, pl. 41.

(319) 4 Inst. 280.

(320) Bract. l. 3. § 120. Godb. 150.

(321) *Taylor v. James*, Godb.

150. *Englefield's case*, W. Jones 285. *Haslewood's case*, Ow. 14. Co. Litt. 114 b. See Plea in bar to an action of trespass, alleging seisin in fee of the manor, and a prescription to have estrays. Lex. Man. App. 123. ca. 39. Estrays cannot be claimed in gross by prescription. *Totter-sall's case*, W. Jones, 283.

(322) Per Hobart, C. J. in *Pleadal v. Gosmore*, Win. 68.

(323) *Healy v. Walsh*, Holt, 564. But according to some cases, the proclamation should be in the two nearest market towns. Br. Estray, pl. 10. Finch's Law. 45. Kitch. 79. *Brownlow v. Lambert*, Cro. Eliz. 716. In three markets

lord should cause proclamation to be made of the seizure of the estray, which proclamation should shew the description of the estray, as a horse, cow, &c. and state such other particulars as may enable the owner to recover his property (324), on tender of a reasonable compensation for the expense of pasturage, &c.; and until such tender be made the lord is justified in retaining the estray (325). But if any difference arises as to the amount of compensation, the lord should demand a certain sum, in order that the reasonableness of the amends may be tried (326), for the owner cannot be presumed to know what sum would make proper satisfaction to the lord (327).

The owner should make sufficient proof of the identity of his property, by reference to marks, or the testimony of his neighbours, &c.; and the lord must, at his peril, restore it, and he cannot put the owner to his oath (328).

adjoining, Bacon's Use of the Law, 65. Once in the church and twice in the markets, Kitch. 79. Proclamation in markets and church of the parish, 39 E.3. 3. Br. Estray, pl. 4. Britt. 26. Kitch. 78-9. Scroggs 133. *Brownlow v. Lambert*, *sup.*

(324) *Taylor v. James*, *ante*. The owner may claim at any time after the year and a day, if proclamation be not made. Britt. 26. Kitch. 79.

(325) Br. Justification. pl. 17, cites 44 E. 3. 12. Kitch. 79. *Pleadal v. Gosmore*, *ante*. 16 Vin. Abr. 490 (E), pl. 5. Holt 564, in *Henly v. Walsh*.

(326) *Taylor v. James*, *sup.* S. C. Noy. 144. S. C. cited 11 Mod. 89, in *Henly v. Welch* (or *Walsh*).

(327) *Henly v. Walsh*, 2 Salk. 686; S. C. Holt 564. And see Co. Entr. 40, 170 (B).

(328) *Taylor v. James*, *sup.* In deed it should seem that it is suf-

If no claim is made within a year and a day (329), the estray belongs to the lord, but he has not an absolute property in it until the year and day are passed (330); and if the beast should again stray, though the lord may chase it back, yet it has been said, that he could not recover it from another into whose possession it should come, and that if it should be seized by the lord of another manor, such second lord should proclaim *de novo* (331).

But it should seem that if the estray is taken from the lord, he may maintain a special action

sufficient for the owner to prove his right of property on the trial. 2 Salk. 686.

(329) *Henly v. Welch*, 11 Mod. 90; S. C. Holt 564. According to this case, the year and day is to be computed from the first proclamation; yet some suppose that the relation is to the time of the seizure. See Sir H. Constable's case, 5 Co. 107, b. Mo. 11. pl. 43. In the latter case, the right of property was held to have relation to the time of seizure, so as to entitle the executors of a lessee for life of a manor to an estray, in preference to the reversioner. *Vide contra*, as between a lessor and lessee of a manor, 12 Co. 100, Anon.

But note, "if an estray happen within the manor of the wife, if

" the husband die before seizure,

" the wife shall have it: for that

" the property was not in the wife

" before seizure." Co. Litt. 351

b, cites 43 E. 3. 8. 10 H. 6. 11.

39 E. 3. 17.

(330) Br. Estray, pl. 11, cites 33 H. 8. Kitch. 79. Finch's Law 45. Bacon's Use of the Law 65. 12 Co. 101, Anon. *Burdet v. Mathewman*, Clayt. 107:—According to this case, the lord could not maintain trespass, until the year and day are passed.

(331) *Pleydell v. Gosmore*, (or *Pleadal & Gosmore*) Hutt. 67 (*ante*). *Harvey v. Blacklole*, Brownl. 236. And see Br. Abr. *sup.* (n. 330). If an estray escapes into another franchise before seizure, the better opinion is that the second lord shall have it, the property not be-

on the case, for such taking (332); and that trespass will lie, upon the constructive possession, even before seisure (333); but the lord could not prescribe to amerce any stranger driving the estray out of the manor, in the manor court (334).

As the right of property in an estray is not changed within the year and day, the lord cannot work the beast (335), without being subject to an action of trespass (336); but if a cow be taken it may be milched, because that tends to the preservation of the animal (337).

And it should seem that the King's prerogative gives him a property in an estray, even before seisure (338).

ing changed. F. N. B. 91 B. n. a. Dy. 338. a. pl. 40.

(332) *Burdet v. Mathewman*, ante.

(333) F. N. B. 91. B. And see *Smith v. Milles*, 1 T. R. 480. *Harvey v. Blacklole*, Brownl. 236. But see Dy. 338 a. pl. 40 marg. per Noy, Att. Gen. But even trover lies against a stranger for an estray without actual seisure. Per Keeling, Ch. J. obiter, 2 Keb. 589: And see Bul. N. P. 33, where it is said that a lord who seises an estray or wreck, may before the year and day expired maintain trover against a stranger; for he has more than a possession, viz. a possession that will turn into a property; cites *Sir William*

Courtney's case, C. B. Salk. MSS. *Pye & Pleydel*, Berks 1750. Per Clarke, Bar. Vide also 2 Williams's Saund. 47 a. n. 1. 2 Taunt. 306-9. 7 T. R. 398.

(334) Dy. 199 b, cites 29 H. 8. Benl. Rep. [23 pl. 38.]

(335) *Bagshaw v. Goward* (or *Gawin*), Cro. Jac. 147; Noy. 119, Yelv. 96. And see Godb. 151, in *Taylor v. James*, (ante). Win. 68, in *Pleadal v. Gosmore*, 12 Co. 101. Anon.

(336) *Oxley v. Watts*, 1 T. R. 12.

(337) *Bagshaw v. Goward*, Noy 119. Cro. Jac. 148. (sup). So a sheep taken as an estray might be sheared. Ib. per Noy, Att. Gen. citing *Prideux's case*.

(338) Dy. 338 b. pl. 40.

An estray should be kept *in loco aperto*, on land in the lord's possession, being part of the demesnes of the manor; and the bailiff of the lord cannot delegate his authority, or deliver the estray to be kept by another (339).

Should an estray be unruly, the lord may use restraint, as by fettering a colt, but in the same way only as he would fether his own beasts, to prevent their breaking down fences (340).

If two tenants in common be of a manor to which estrays belong, no action would lie by the one against the other tenant in common who should alone seise an estray, unless by prescription the one is to have the first estray, and the other the second, and one of them should take the beast pertaining to the other (341).

(339) See *Taylor v. James*, in Godb. & Noy, (*ubi sup.*).

(340) Winch, 68, 125, in *Pleasdal v. Gosmore*; Hobart, C. J. *contra*, citing *Harvey v. Blacklole*, *ubi sup.*

(341) Co. Litt. 200 a.

See as to estrays belonging to infants or others under disability, *post*, p. 776. tit. 'Wreck.'

WAIFE. (*Bona fugitivorum.*) Waifes are, in strictness, such stolen goods only as a felon upon hue and cry, or other pursuit, waives or casteth from his person (342).

These are forfeited to the King, or to the lord of the franchise (343); but are only to be claimed by special grant or by prescription, and do not belong to the lord of a hundred or manor, by reason of the hundred or manor (344).

And even these shall be restored to the owner if he make fresh suit, that is, if he pursues the felon as soon as he has notice of the theft (345), and whether he be taken or not, and this at common law; so also by the stat. 21 H. 8. c. 11, if the owner give evidence upon the indictment, and the felon be attainted (346):—but after seisure by the King or the lord, the owner cannot retake the goods, though upon fresh suit (347); for by the seisure the property is changed (348).

(342) Br. Estray & Waife, pl. 2. *Foxley's case*, 5 Co. 109. S. C. Cro. Eliz. 694. Either the stealing or the waiving may be traversed. Br. issues joines, pl. 68, cites 12 E. 4. 5. Ib. Traverse *per* &c. pl. 241, cites S. C.

(343) Br. Forfeit. de terres, pl. 110, cites 21 E. 4. 16. Ib. Estray & Waife, as above.

(344) Br. Estray, pl. 2, cites 44 E. 3. 19. As to prescriptive title, see Co. Litt. 114 b.

(345) 7 H. 4. 44. Br. Fresh suit, pl. 4. Ib. Estray & Waife, pl. 7, cites 21 E. 4. 16. *Rooke v. Denny*, 2 Leo. 192.

(346) Scroggs 130. Br. Estray & Waife 8, cites Dr. & Stud. lib. 2. ca. 3 & 51.

(347) Hale H. P. C. 541. Br. Forfeiture de terres, pl. 110, cites 21 E. 4. 16. Stamf. f. 186. A. Kitch. 80.

(348) Rastal Restitution 2. Kitch. 80.

If, however, the owner challenges the goods upon fresh suit, and before seisure, they shall not be forfeited (349).

In an action against the lord of a manor for misusing a horse stolen from the plaintiff, who alleged that he made fresh suit, the court held that the defendant ought to have traversed the fresh suit whereof the plaintiff had declared, the property being thereby preserved (350).

And in trover for goods seised, *ut bona waiviata*, it was adjudged without argument, that the defendant ought to allege a felony committed &c., and that the goods were waived by the felon (351).

But if the goods are not seised by the King or the lord, he who was robbed may seise them, even twenty years after (352).

Goods stolen and left in the house of the felon, or of another person, or in another's custody, or secreted, even if the felon flies, are not, properly speaking, waives; and these may be retaken by the owner without fresh suit (353).

(349) *Dickson's case*, Hetl. 64-5. In this case the court was divided as to the forfeiture, the goods being seised before the owner came, and the fresh suit not being wholly within view of the felon.

(350) *Rooke v. Denny*, 2 Leo. 192.

(351) *Davies' case*, Cro. Eliz. 611.

(352) Br. Forfeiture de terres,

pl. 110, cites 21 E. 4. 16. Kitch. 80.

(353) *Foxley's case*, *ubi sup.* S. C. Mo. 572. But it has been held, that if a thief leaves my horse or his own horse, in an inn, for a certain sum by the week for his meat, it is not any waive; yet if he leaves it there without any agreement for his meat, it is a waive. P. 1 Ja. B. 22 Vin. Abr. (Waife) 408, pl. 1, 2.

The goods of a merchant alien cannot be forfeited as waifes, and if waived by the felon after the alien's death, they belong to the executor of the alien (354).

It is the better opinion that the lord may have trespass or trover against a stranger, for waife taken out of his manor, even without any seisure (355); but that the property is not changed before seisure, so as to give the lord a title as against a second lord, into whose franchise it should stray (356).

Bona fugitivorum are the proper goods of him who flies for felony, and they cannot be taken as waifes (357); and the lord of a hundred or manor, although he may prescribe for waifes (358), cannot prescribe for goods of felons and fugitives (359). These, however, may be forfeited to the lord, under a special grant from the crown; but not until it is found upon indictment that the party fled for the felony (360).

(354) *Per* Doderidge, J. in *Waller v. Hanger*, 3 Bulst. 19. *Vide* also *Scroggs* 130. 2, cites 44 E. 3. 19. But see *contra*, *Ib.* pl. 9, cites 29 E. 3. 29, & M. 37 H. 8.

(355) F. N. B. 91 B. Kitch. 80. *Scroggs* 132. *Ante*, 769.

(358) *Ante*, p. 771.

(356) 12 H. 8. 10. F. N. B.

(359) Br. Estray & Waife, as *sup.* n. 357.

91 B. u. a. *Ante*, n. 331, 348.

(360) 5 Co. 110 b, in *Foxley's*

(357) Br. Estray & Waife, pl. case.

WRECK.—It should seem to have been a principle of common law, that the fragments of a vessel wrecked at sea, and the lading thereof, were forfeited to the King, in virtue of his prerogative right to all goods of which the ownership could not be established; and this identification, when the art of navigation was very imperfect, was necessarily a matter of great difficulty. But it has been supposed that goods wrecked upon the sea were given to the King, to compensate for the great charges incurred by the state in scouring the seas of pirates (361).

The better opinion is, that even at common law, if any person, or any animal, escaped from the vessel, whether alive or dead, whereby the ownership of the lading could be traced, neither the vessel nor the lading were wreck; and the statute of Westm. 1. (3 E. 1.) c. 4. has clearly established that principle, declaring that where a man, a dog, or a cat, escape quick out of the ship, such ship, nor barge, nor any thing within them, shall be adjudged wreck; and that this act was only a declaration of the common law, may be inferred from various books of great authority, particularly from Bracton, written before the statute, and the Mirror, written after it (362).

(361) 2 Inst. 167. *Hamilton & Smyth v. Davis*, 5 Burr. 2738.

(362) See Bract. lib. 3. f. 120. Brit. f. 7. 26. 85. Flet. lib. 1. c.

41. Mirr. c. 1. s. 13, and c. 3. s. de wrecks. *Vide* also 2 Inst. 166-7.

Sir H. Constable's case, 5 Co. 107 b. *Sutton v. Buck*, 2 Taunt. 311.

And in a very ancient case it was adjudged, that if a ship be pursued by enemies, and after being taken and ransacked is put adrift, and subsequently is cast on land, where her crew arrive, there shall be no wreck (363).

Although the above statute speaks generally of a wreck, it extends to the three cases of *flotsam*, *jetsam*, and *lagan*, (or *ligan*) (364).

Flotsam maris is where a ship perishes, and the goods float upon the sea. *Jetsam* is where the goods of a ship, which afterwards perishes, are cast into the sea for disburthening it. *Lagan* (or *ligan*) is when any ponderous goods of a vessel, which afterwards perishes, are cast into the sea, and with a view to recover them, a cork or buoy is fastened to them; and none of these goods are called wreck, unless driven upon shore (365).

When goods are taken as wreck, the owner should prove his right to the property within a

(363) *Fishlake's case*, 5 R. 2, cited 2 Inst. 167.

See further as to what constitutes wreck, 22 Vin. Abr. 537 *et seq.*

And when goods are cast on land, and are not wreck, and are stolen, the owner may have a commission of *oyer and terminer*, directed to certain persons to enquire of those who did the trespass, and to hear and determine the same, and to make restitution to the party; and a writ to the sheriff to return

probos et legales homines, &c. before the said justices, F. N. B. 112. C. 2 Inst. 168.

(364) 2 Inst. 167. "And of them the Admiral has jurisdiction." *Sir H. Constable's case*, 5 Co. 106 b.

(365) See *Sir H. Constable's case*, *sup.* And even then the right to them will be preserved by any *indicia* of ownership. *Hamilton & Smyth v. Davis*, 5 Burr. 2732. *Sutton v. Buck*, 2 Taunt. 311.

year and a day after the seizure (366): or his executors or administrators, in case he should die within that period (367).

The King is an exception to this limitation of time, and may prove his right of property at any period (368).

And if the goods seized as wreck be *bona peritura*, the sheriff may sell such goods within the year and day (369).

Although wreck of the sea is the property of the King by common law right (370), yet like waives and estrays it may belong to a subject by grant (371), or by prescription (372). And it has

(366) The year and a day is given by the stat. Westm. 1. c. 4. *Ante*, p. 774. *post*, n. 375. Though a (special) property is in law vested in the lord before seizure, yet the year and day is accounted from the seizure, as it is by that act alone the owner can know where to make his claim. 2 Inst. 168, citing 35 H. 6. 27. And see Br. Wreck, pl. 2.

The property of infants and others under disabilities is equally bound, after the year and day, as well in the case of wreck, as of an estray. *Sir H. Constable's case*, 5 Co. 108 b.

(367) 2 Inst. 168.

(368) *Ib.* Br. Wreck. pl. 2, cites 35 H. 6. 27. Kitch. 24, cites 45 H. 6. 32.

(369) 2 Inst. 168. Plow. Com. 466, Kitch. 24.

(370) Scroggs 127.

(371) See several opinions on adverse claims to the right to wreck within the honour of Bramber, under grants from the crown, 2 vol. Ca. & Op. 452, &c. And note that those adverse claims gave rise to the case of *Biddulph & Ather*, 2 Wils. 23; in which it was held that two allowances in eyre, and a judgment in trespass 400 years since, were not conclusive evidence against usage for 92 years past to have wreck of the sea.

The general words of all *privileges*, *royalties*, &c. would not seem to pass the right to wreck, in a grant from the crown of a seignior, in which a right to wreck had been anciently exercised. See 2 vol. Ca. & Op. 451.

(372) Co. Litt. 114 b. 2 Inst. 168. Br. Wreck, pl. 1, citing 11 H. 4. 16. See further as to wreck

been adjudged that by prescription wreck may belong to the Lord High Admiral (373).

When a subject is entitled to wreck by grant or prescription, he is said to have a constructive possession, and also a special property vested in him even before seisure, so that he may have his action of trespass or trover against any person taking it away (374).

It is clear therefore that if a stranger takes possession of wreck after seisure, an action either of trespass or trover lies against him (375); but the

by prescription, 2 vol. Ca. & Op. 456. *Saunders'* case, Mo. 224. A right to wreck on another man's lands, of necessity gives a right of way over the lands to take it. 6 Mod. 149. Anon.

(373) *Wiggen v. Branthwaite*, 12 Mod. 260. S. C. 1 Lord Raym. 474. S. C. Holt 758. In this case, Holt, Ch. J. said, he made no doubt but some wreck might belong to the Admiral by prescription, as that about the Cinque Ports, and such places, where he was most conversant in ancient times; grounding his opinion on the antiquity of the office.

(374) F. N. B. 91 B. *Smith v. Milles*, 1 T. R. 480. Bul. N. P. 33. *Ante*, n. 333, 366. But see Hawk. Pl. C. 93. c. 33. s. 24, who says, it seems that the taking of wreck before seisure cannot be felony, because no one has property of the goods at the time of the taking. And see Kitch. 49, citing 22 Ass. 99.

(375) 10 H. 7, 6. Kitch 24. The Stat. West. 1. c. 4. (already cited) further enacts, that the goods shall be saved and kept by view of the sheriff, coroner, or the King's bailiff, and delivered into the hands of such as are of the Crown, where the goods were found; so that if any sue for those goods, and after prove that they were his, or perished in his keeping, within a year and a day, they shall be restored to him without delay; and if not, they shall remain to the King, and be seized by the sheriffs, coroners and bailiffs, and shall be delivered to them of the town, *which shall answer before the justices* of the wreck belonging to the King. And where wreck belongeth to another than to the King, he shall have it in like manner. And he that otherwise doth, and thereof be attainted, shall be awarded to prison, and make fine at the King's will,

absolute property in wreck is not vested in the lord until after the year and day (376).

In the parish of East-dean, in Sussex, there is a custom for the lord of the manor, when a ship is wrecked there, and cast on the lands held of the manor between the flux and reflux of the sea, to bury the dead, and to take care of those who are living and cast on the land, being either sick or wounded, and to preserve the shipwrecked goods for the use of the owners, and for this the lord to have the *best anchor and cable*; and this has been held to be a good custom, it not being unreasonable to have some manner of recompence even for a charitable act (377). But where in trover for an anchor and cable, the defendant pleaded a custom in the manor of Miching, in Sussex, that if any ship or boat sailing on the sea, strikes on the land held of the manor and perishes, though it is not wreck, yet the best anchor and cable, &c. belong to the lord of the manor, the plea was adjudged ill, no *custom of salvage* being found, and the alleged custom being void for want of any manner of consideration to support it (378).

and shall yield damages also. And if a bailiff do it, and it be disallowed by the lord, and the lord will not pretend any title thereunto, the bailiff shall answer if he have whereof, and if he have not whereof, the lord shall deliver his bailiff's body to the King. By answering before the justices is meant, that wreck shall not be tried in the

admiralty court, but before the King's justices at common law. 2 Inst. 168. And see 15 R. 2. c. 3. Kitch. 24.

(376) Vaugh. 168. Scroggs 127.

(377) *Simpson v. Bithwood*, 3 Lev. 307. See the pleadings in this case in Appx. to Lex. Man. pl. 41. p. 126.

(378) *Geere v. Burkensham*, 3 Lev. 85.

The lord of a manor has been held not to be entitled to salvage for taking charge of wreck against the owner's consent, and therefore not in the instance of parts of a ship being thrown on the land within the manor, when the servants of the owner are there to take care of them for him (379).

TREASURE TROVE.—It would appear by several ancient authors (380), that treasure trove, at some far distant period, belonged to the finder; but even before the Conquest (with perhaps some exceptions) (381), it was a rule of common law, that treasure trove belonged to the King by his prerogative (382), or to some lord of a manor or liberty, by special grant (383), or by prescription (384).

The term *treasure* is restricted to gold and silver (385), but it may be either in bullion

(379) *Sutton v. Buck*, 2 Taunt. 302.

(380) Staunf. f. 39. Glanv. 1. 1. c. 1. l. 14. c. 2. Britt. 7, 26, 85. Bract. 1. 3. f. 120. 2 Inst. 168. 3 Inst. 132.

(381) 3 Inst. 133.

(382) Kitch. 78. 3 Inst. 132-3.

(383) *Ib.* Fitz. Abr. tit. Corone pl. 241, 436, cites 22 E. 3. 8 E. 2. Kitch. 78.

(384) Co. Litt. 114 b. 3 Inst. 132-3, cites 21 H. 6. tit. Prescription 4. 22 E. 3. cor. 241. 1 H. 7. 33. 9 H. 7. 20. 46 E. 3. 16. Staunf. pl. cor. 39 b. lib. fo. 109 b.

(385) 3 Inst. 132. The King by his prerogative is entitled to large fish, as whales and sturgeon. Bract. 1. 3. f. 120. Kitch. p. 24, says "the King shall have wreck of the sea throughout the whole

(386), coin or plate; and the right of the King or the lord presupposes the impossibility of an identification of the property of the person who concealed it (387); but it is immaterial whether it be found hidden in the ground, or in the walls or roof, or ruins of any house, or other building, or elsewhere (388); though treasure found in the sea still belongs to the finder (389).

We are told by Glanvill and Bracton, that the fraudulent concealment of treasure trove, was an offence punishable by death; but it was long since adjudged that the punishment should be by fine and imprisonment only (390).

“ realm; and *sturgeons* taken in
“ the sea, or other where within
“ the realm, except some privileg-
“ ed places, be the King’s.”

(386) Velus of gold and silver in the ground of subjects, also belong to the King by his prerogative, for they are Royal mines. 3 Inst. 132.

(387) Stath. tit. Coron. Kitch. 78. Or by his executors, Fitz. Abr. Coron: 446, cites 22 H. 6.

(388) Bract. l. 2. f. 10. 3 Inst. 132.

(389) Britt. f. 26. Kitch. 78. 2 Inst. 168.

(390) Stath. tit. Coron. Fitz. Abr. Coron. 265, cites 22 E. 3. 3 Inst. 133. Kitch. 49. Treasure trove as well as wreck shall be enquired of by the coroner. 3 Inst. 133. *Ante*, p. 760. (tit. ‘Deodand’).

FAIRS, MARKETS, TOLLS, &c.—These franchises are annexed to many manors, but are to be claimed only by grant from the crown (391), or by prescription (392); but even if the grant of a fair or market be preceded by a writ of *ad quod damnum*, or the usual words *quod non sit ad nocumentum*, &c. be omitted in the grant; yet the patent shall be repealed by *scire facias*, if it be to the nuisance of the King or others (393). But it has been held, that an uninterrupted user for twenty years, gives a *prima facie* right to a fair or market, and affords a sufficient answer to an indictment for a nuisance to a highway, although the party is liable to be proceeded against for the usurpation of the franchise (394).

And it has also been adjudged that if a grantee

(391) As an evil rather than a good might result from the establishing of additional fairs or markets, it is usual previous to a grant by the King to have a writ of *ad quod damnum* issued and returned. *The King v. Butler*, 3 Lev. 222. 2 Vent. 344.

(392) Co. Litt. 114 b. 2 Inst. 220. And see *Hill v. Smith*, 10 East 476. 1 Wils. 112. Tenants in ancient demesne have a qualified exemption from toll, *ante*, p. 657.

(393) 2 Inst. 406. *Rex v. Butler*, *sup.* 2 Roll. Abr. 140. pl. 2. Com. Dig. Market (C. 2). And an action would lie by the private owner of a market that was injured. 1 Sir W. Bl. 581. If a fair or market be set up without pa-

tent, to the nuisance of another, the party aggrieved may have an assize of nuisance, returnable into the King's Bench. F. N. B. 184. A.

(394) *Rex v. Smith et al.* 4 Esp 111. And see *Yard v. Ford*, 2 Saund. 172. *Ib.* 175. n. 2.

A *quo warranto* will not lie merely for *encouraging* and *promoting* the holding of a market, it being at most a misdemeanor, and no usurpation of a franchise. *Rex v. Marsden*, 3 Burr. 1812. S. C. 1 Sir W. Bl. 579. And it seems doubtful whether an information in nature of a *quo warranto*, for a usurpation upon the crown by holding a fair or market, can be granted on the application of a private person. *Ib.*

of a market suffer another to erect a market in his neighbourhood, and to use it uninterruptedly for three and twenty years, he is barred of an action on the case for a disturbance of his franchise (395).

The lord of a manor having a grant of a fair or market generally, may hold it at any place where it can be most conveniently held (396); and if the grant prescribes a particular vill, the lord may remove the fair or market to any situation within the precinct of his grant; and, after notice, may have trespass against any person going upon his soil in the old market-place (397).

Upon the grant of a fair or market, the lord shall have a court of *Piepoudre* (or *Pipowders*) as incident thereunto without any special words, it being for the advancement of justice, and not of a private interest (398).

And the right to appoint a clerk to the fair or market, is also incident to the franchise, and

(395) *Holcroft v. Heel*, 1 Bos. & Pul. 400.

When equity will interfere to enforce the lord's right to tolls, see *ante*, pt. 1. pa. 601, n. 22. *Vide* also 5 Price 473.

(396) *Dixon v. Robinson*, 3 Mod. 107. *Rex v. Cotterill*, 1 Selw. & Barnew. 67.

(397) *Curwen v. Salkeld*, 3 East 538.

(398) 2 Inst. 221. 4 *ib.* 271. The court of pipowders is incident to a fair or market, as a court baron is to a manor. It is, however, a court of record, to be holden before the steward, and its jurisdiction consisteth in these four essentials:

1. The cause of action must arise in the time of the particular fair or market. 2. It must relate to things which concern the market, therefore, if one slander particular wares to the injury of another, previous to the market, the court has no jurisdiction. 3. It must arise within the precinct of the fair or market. 4. The plaintiff or his attorney must take an oath according to the stat. 17 Edw. 4. c. 2. and 1 R. 2. c. 6; but this does not conclude the defendant. *Hall & Jones's* case, cited 4 Inst. 272. And see *Hall v. Pyndar*, Dy. 133 a, and the several cases there referred to.

he will be entitled to his reasonable fees (399).

But as a toll is a matter of private benefit to the lord, it is not necessarily incident to a fair or market, as was adjudged in the case of Northampton (400), wherein it was resolved, that if the toll granted with a fair or market be unreasonable, the grant of the toll is void, and the fair or market shall be accounted a free fair or market :—And the exaction of an outrageous toll would entitle the King to seise the franchise into his own hands (401).

It has been decided that although every person has a right to go into a public market to buy and sell, without paying any toll, if none be due by prescription, yet the owner is entitled to *Stallage* and *Piccadage*, that is, to a compensation for placing a stall, and for any breaking up of the ground ; and the remedy for this is trespass (402).

And the franchise may be forfeited by non user, (which would naturally induce the presumption of a surrender of it to the crown (403) ;) or by misuser, so that should the grantee neglect to perform the terms prescribed by the patent, it might be repealed by writ of *scire facias* (404).

(399) 4 Inst. 273. c. 61.

(401) 2 Inst. 219. 1 Wils. 114.

(400) M. 39 & 40 Eliz. cor. rege. 2 Inst. 220. S. C. (*Heddy v. Wheelhouse*), Cro. Eliz. 558. And see *The Mayor &c. of Northampton v. Ward*, 2 Str. 1239. S. C. 1 Wils. 115. *Daventry case* (*Holloway v. Smith*), 2 Str. 1171. *Lowden v. Hieron*, 1 Holt, N. P. 547. 6 East 438. Com. Dig. Market F. 1.

(402) *The Mayor &c. of Northampton v. Ward*, ante. And see Mo. 474, 1 Selw. & Barnew. 71. A table placed in an open market is considered as a stall. *The Mayor &c. of Norwich v. Swan*, 2 Sir W. Bl. 1116.

(403) Br. Franchise 10, 26.

(404) Br. Franchise 14, 22. 12 Mod. 271.

FREE CHASE OR PARK (405). (*Free Warren: Free Fishery, &c.*) Although these subjects are in some degree connected with the review we have taken of manorial franchises, I do not feel that they are of a nature to call for any particular commentary in the present treatise.

The reader, however, is reminded that *Free Chases or Parks* were tracts of land granted to a subject, under one or other of those names, or grounds converted by the owner into chases or parks, under a license from the crown, and were considered as smaller forests; but that they were not subject to the forest laws, the grantee having no power to appoint officers of the forest, or to hold courts (406):—It is also to be recollected that these franchises can only be claimed by grant, or by prescription (407).

(405) A park consists of vert, venison, and inclosure, and a determination in either of these requisites, amounts to a disparkment. *Sir Charles Howard's case*, Cro. Car. 60.

(406) 4 Inst. 314. But it appears that royal forests were sometimes granted by the crown to a subject, with express authority for the administration of justice there. *Leicester Forest case*, Cro. Jac. 155.

(407) See Co. Litt. 114 b. 11

Co. 87 b. Lord Coke, (4 Inst. 318) says, "And it is to be observed that a man may have a free chase as belonging to his manor, in his own woods, as well as a warren or park in his own grounds; for the chase, warren, and park, are collateral inheritances, and not issuing out of the soil, as the common doth; and therefore if a man hath a chase in other men's grounds, and after purchase the grounds, the chase remaineth."

And I am induced to avail myself of this opportunity of referring the student to my Lord Coke's 4 Inst. [p. 289. *et seq.*] and to Mr. Justice Blackstone's Commentaries [vol. 2. c. 27], for a clear and interesting exposition of the forest laws, as they existed in the Saxon æra, and as new modelled upon the Norman conquest; and the more so as it will be seen by the legal authorities adverted to, that the arbitrary and oppressive character of the forest laws, was maintained by the establishment of several courts (408), imitative of

As to commonable rights and other like privileges in chases or parks, (and which may also exist by prescription in forests,) see 4 Inst. 298-9, &c.

(408) The courts of the forest were, 1. The *Woodmote* court, or court of attachments kept before the verderors every forty days, for the presentment & inrolment only of attachments *de viridi et venatione*: 2. The court of survey or lawing of dogs, held every third year: 3. The *Swainmote Court* held thrice in the year by the steward (who acted ministerially only) before the verderors, (there being most commonly four in each forest), as judges of the court; and at this court the attachments of the foresters were presented, and the freeholders within the forest

were to appear and make inquests and juries; but the court did not follow up its conviction by judgment: and 4. The court of the *justice seat*, holden before the chief justice of the forest, called in the books *justice in eyre*, and which could not be kept oftener than every third year; and only on forty days summons, one writ of summons being directed to the sheriff of the county. And at the sessions of this *justice in eyre* he was to proceed on the presentments made at the Swainmote courts, before a jury. It should seem that a presentment or indictment of this court, previously found in the swainmote, was not traversable, but that an indictment in the court of the justice seat, not found in the swainmote,

those ordained by our Saxon ancestors, for the more substantial and legitimate objects of maintaining the good order of society, and the relative rights of its component members, and of which we are about to speak, in introducing the subject matter of the next and concluding chapter (409).

FREE WARREN.—The franchise of free warren is to be claimed only by grant from the crown or by prescription, which supposes such a grant (410), and the effect of it is to vest in the grantee a property in such wild animals, or inferior species of game, as are deemed the beasts and fowls of warren (411).

might be traversed, it having been presented but by one jury. 4 Inst. 291, cites 8 E. 3. Minere Pickering, 147. a. 21 E. 3. 49. See further as to these courts. Com. Dig. Chase (R).

(409) It appears almost unnecessary to remind the student that by the charter 9 H. 3. [*carta de foresta*,] (the immunities of which Mr. Justice Blackstone observes, 'were as warmly contended for, and extorted from the King with as much difficulty, as those of magna carta itself,' 2 vol. Com. p. 416) many forests were disafforested, and the penalties of the forest laws greatly relaxed, and that by many subse-

quent statutes and long disuser, 'this prerogative is now become 'no longer a grievance to the 'subject.'

(410) 11 Co. 87. b. Co. Litt. 114. b. Br. Warren. pl. 1, cites 3 H. 6. 12. Manw. Warren. Forest. pl. 43.

(411) See F. N. B. 86-7, and the notes. Beasts and fowls of warren, are hares and rabbits, pheasants and partridges. Manw. 95. In Co. Litt. (283 a.) a roe is also named as a beast of warren, and quail, rail, woodcock, herne, mallard, &c. as fowls of warren. Beasts of park or chase are, buck, doe, fox, marton, and roe. Manw. 94. Co. Litt. 233 a. 8 Co. 138 b.

If a person having a free warren aliens the lands, the right of warren is extinct, nothing being reserved, and the land only being granted; but a reservation of the warren would be good (412).

And if a person having a manor in which there is a free warren should enfeoff another of the manor, *with the appurtenances*, the warren would not pass (413).

Whether or not a person may have a property, *ratione soli*, in such *feræ naturæ* as are denominated game, or how far such possible right may be affected by any manorial privileges in lords of manors, emanating from the King and founded on principles of feudal tenure, does not appear to be a question so immediately connected with the subject of the present treatise, as to call for particular animadversion in this place (414); but assum-

Beasts of forest or venary are, hart, hind, hare, boar, and wolf. Manw. 91. 8 Co. 138 b.

(412) Br. Warren. pl. 3, cites 35 H. 6. 55.

(413) Ib. pl. 7. And see ib. pl. 5, citing 14 H. 4. 6.

(414) I have pleasure, however, in referring the reader for much useful information on the character of the game laws of this country, and for the means of forming his own judgment on the much controverted right of lords of manors, to sport over the grounds of others within their respective

districts, to Mr. Chitty's treatise on the game laws, and to Professor Christian's notes to the commentary of Mr. Justice Blackstone [2 vol. Com. c. 27], on the right of property in such animals *feræ naturæ*, as come under the denomination of game, in which the learned Professor opposes the doctrine advanced by Sir W. Blackstone, that the sole property of all the game in England, and, as a consequence, the exclusive right of taking and destroying it, is vested in the King, as the ultimate proprietor of the soil. The reader's particular atten-

ing that a right of property may exist in this spe-

tion is also called to a recent publication of considerable interest entitled "A treatise on the rights of manors as deduced from the most ancient and best authorities, with a report on the game laws, and comment," the author of which wholly dissents from the arguments of Professor Christian.

I am induced to express my assent to Sir Wm. Blackstone's position, that the sole right of property in all wild animals became vested in the King, from the period, at least, of the establishment of the feudal system in this country; and I conceive that the right of the lord of a manor or other royalty, to take and kill game within the confines of his seignior, either as an exclusive right or concurrently with the owners of the soil, is founded on the prerogative title of the King. Whether the right be exclusive or concurrent must depend on the words of the grant, or evidence of usage, for the right may exist by prescription, which presupposes a grant. And I also apprehend, that an ancient grant from the Crown of the franchise of taking and killing game within a limited district, would give the grantee the power of going over the grounds of others, without being considered a trespasser.

It does not appear to me, however, that the lord of a manor can claim any right of sporting over grounds not in his own possession, under the provisions of the several acts of parliament authorising lords of manors to appoint game-keepers, and empowering such keepers, for the preservation of game, to search for noxious animals and engines of destruction, and also to kill game for the use of the lord; I apprehend, indeed, that the powers of game-keepers appointed under the acts of parliament alluded to, would be held to extend only (as far as they may be protected by the provisions of those acts against an action of trespass,) to such lands as should be in the lord's immediate possession, and those perhaps belonging to others, over which the lord had a right to sport under an ancient grant from the Crown, or by prescription. The case of the *Earl of Ailesbury v. Pattison*, 2 Dougl. 28, clearly shews that the Courts of Law are disposed to circumscribe, as much as possible, the powers of the acts of 22 and 23 Car. 2, and the 5th of Anne, and other subsequent statutes, authorising lords and ladies of manors to appoint gamekeepers; for in that case Lord Mansfield held, that the words "*manors or other*

cies of animal, *ratione soli* (415), yet it is clear that such right would be subservient to the franchise of free warren (416), and it should certainly seem that a free warren over the lands of another person, may exist by prescription (417).

"*royalties*," in the first mentioned act, did not extend to a Hundred or Wapentake, which would have been expressed, if the legislature had meant the act to apply to royalties of a higher nature than a lordship or manor.

I would further submit, that the franchise of sporting over the grounds of another, under a grant to the lord of a manor, may be lost, as well by a conveyance of the demesnes of the manor without reserving the franchise, as by non-user, such discontinuance of the exercise of the right, inducing the presumption of a release and extinguishment of it, which extinction seems to be perfectly consistent with established principles of tenure, as between the lord and the owner of land within his manor. (See *ante*, p. 787, as to the extinction of a free warren.) But it is probable that on an extinguishment of the right of the grantee of the Crown, the prerogative right, to the extent of that formerly exercised by the lord under the particular grant, would revive.

(415) The case of *Sutton & Moody*, Salk 556; 1 Ld. Raym.

250; Comb. 458; 5 Mod. 375; 12 Mod. 144, is an authority that the courts will presume a right of property to game in the owner of the land on which it is killed, *ratione soli*, as against a perfect stranger; but it is a possessory property only. F. N. B. 87 A. And see 12 H. 8. 10. 11 Co. 87 b. 4 Inst. 320. 2 Bl. Com. 419. *post.* n. 419.

(416) *Sutton v. Moody*, *sup.* The frequency of these grants is urged by Sir William Blackstone in favor of his position, that the exclusive right of taking and destroying game belonged to the King. 2 Com. 417.

(417) Br. Warren, pl. 2, cites 34 H. 6. 28. *Ib.* pl. 3. And see *Rex v. Talbot*, Cro. Car. 311. *Fowler v. Seagrave*, Bulst. 254. *Sutton v. Moody*, *sup.* But an alienation of the land without reserving the warren would extinguish the right. Br. Warren, pl. 3, cites 35 H. 6. 55. Dy. 306. So by prescription a person may have a warren in a forest, but there must be an allowance of it in eyre, that is, in the court of the forest. *Harrison's case*, W. Jones, 280.

And the grant of free warren would seem to give a right to appoint a warrener to preserve the game, who is justifiable by ancient usage in killing dogs, cats, and vermin (418).

When the right of property in wild animals can be claimed *ratione privilegii*, it nevertheless continues only so long as they remain within the limits of the particular franchise, except, indeed, that the property would not be changed by being hunted by the owner, or even by a stranger, out of the free chase or warren, and killed in the grounds of another person (419).

FREE FISHERY.—A free fishery in its more ordinary acceptation, means an exclusive right of taking and killing fish in an arm of the sea (420), or navigable river (421) being an arm of the sea

(418) Cro. Jac. 45, in *Wadhurst v. Damsie*.

(419) 2 Bl. Com. 419. The learned judge there also states, (and so the law clearly seems to be,) that "if a man starts game on another's private grounds and kills it there, the property belongs to him on whose ground it was killed, because it was also started there, the property arising *ratione soli*: whereas if after being started there it is killed in the ground of a third person, the property belongs not to the owner of the first ground, because the property is local, nor

"yet to the owner of the second, because it was not started in his soil; but it vests in the person who started and killed it, though guilty of a trespass against both the owners." And see *Churchward v. Studdy*, 14 East 249.

(420) There can be no prescription for a right to fish in the sea, as annexed to certain tenements, such right being common to all the king's subjects. *Ward v. Craswell*, Willes 265. Kitch. 45, cites 8 E. 4. 10. 'If the water ebb and flow upon any land, every one may fish there;' *per* Choke, *ib.*

(421) Some of the books seem

(422), under a grant from the crown (423), and is therefore considered as a royal franchise (424); and as the jealousy with which this privilege was viewed by the people led to a declaration in King John's charter [c. 47], that where the banks of rivers had been first defended in his time, they should be laid open; and in the charter of 9 Hen. 3. c. 16, that no banks should thenceforth be defended, but such as were so in the time of Henry his grandfather (425), it has been suggested that 'a franchise of free fishery ought now to be at least as old as the reign of Henry the 2nd' (426).

Although it has been supposed that a *several* fishery is a perfectly distinct franchise from a *free* fishery, in that the owner of a *several* fishery 'must be, or at least derives his right from, the owner of the soil,' (427), which is not requisite in a *free* fishery, for that term imports the right to fish in the waters of another (428); and from a *common* of piscary, in that the latter does not imply an exclusive right (429); yet others have slighted

to extend the term *free fishery* to public rivers, though not arms of the sea. See 2 Bl. Com. 39. Per Lord Mansfield, in *Carter v. Murcott*, 4 Burr. 2184. Per Holt, G. J. in *Warren v. Matthews*, 1 Salk. 357.

(422) *Riott Bath* case, Sir John Davis's Rep. 55.

(423) The right must be clearly proved, and cannot be presumed. *Carter v. Murcott*, *sup.*

(424) 2 Bl. Com. 39.

(425) See the case of *Weld v. Hornby*, 7 East 195.

(426) 2 Bl. Com. 39, 417. 1 Campb. 312 n.

(427) 3 Bl. Com. 39. And see Kitch. 46, cites 17 E. 4. 6. Ib. 47, cites 22 E. 4. 146.

(428) Kitch. 46, cites 4 E. 3. *Trempas* 224; 7 H. 7. 13. 18 E. 4. 5.

(429) Free fishery held to import an exclusive right, equally

these distinctions, and considered a free fishery merely as a liberty to fish in the *several* fishery of the grantor (430), and to be synonymous with *common* of piscary (431); and others again have denied that ownership of the soil is necessarily included in a *several* fishery (432).

These conflicting opinions are ably digested by Mr. Hargrave in his learned note above referred to, but that very distinguished lawyer has thought proper to leave the question open to future discussion, and it would be great presumption in me not to follow such an example; only further remarking, that in the case of *The Mayor & Commonalty of Orford* in Suffolk v. *Richardson and another*, Lord Kenyon (the other three judges of the court of B. R. concurring) held, that there may be a prescriptive right in a subject to a *several* fishery in an arm of the sea (433); and that in the case of *Rogers v. Allen* (434), Heath, J. held, that a *several* fishery in a navigable river, may pass as appurtenant to a manor.

But it has been adjudged that every subject may fish in navigable rivers, the king's prerogative right being confined to whale and stur-

with a *several* piscary. *Smith v. Kemp*, Salk. 637. S. C. Carth. 285.

Common of piscary may be prescribed for as appendant to land. Kitch. 46.

(430) 2 Sid. 8, cited 2 Bl. Com. 40.

(431) See 2 Bl. Com. 40. *Up-ton v. Dawkin*, 3 Mod. 97. Comb.

11. *Peak v. Tucker*, cited Carth. 286, marg. But see Salk. 637.

(432) Co. Litt. 122 a. Bract. f. 208 b. And see Mr. Hargrave's note [7] to Co. Litt. 122 b.

(433) 4 T. R. 439. Hargr. Tr. 19.

(434) 1 Campb. 312. See this case on a point of evidence, *ante*, pt. 1, pa. 568. n. 119.

geon (435); and that the rule extends even to arms of the sea (436), unless an exclusive right exists by prescription (437).

When a river, not navigable, runs between two manors, and is the meer and boundary of the manors, each lord has a moiety of the river and fishery (438).

And when no manorial franchise is claimed in an inland river, not navigable, the right of fishery is in the proprietors of the land on either side, as owners of the soil or bed of the river, and generally extends *ad filum medium aquæ* (439).

The franchises of free chase, free warren, and free fishery may, I apprehend, like other franchises, be lost by non-user or abuser, as well as by surrender to the crown (440); but we have seen that minor prescriptive rights exercisable by the lord of a manor, will continue, notwithstanding the court baron be lost (441).

(435) *Ante*, tit. 'Treasure trove.'
n. 385. And see stat. 17 Edw. 2.
c. 11. *de prerogativa regis*.

(436) *Warren v. Matthews*, 6
Mod. 73. S. C. 1 Salk. 357. Anon.
1 Mod. 105.

(437) *Carter v. Murcot*, 4 Burr.
2162. *Ante*, n. 422.

(438) *Davis's Rep.* 155.

(439) *Carter v. Murcot*, *sup.*
And see *Davis's Rep.* 155.

(440) Cro. Jac. 155. 12 Mod.
271. And see as to misuser, *ante*,
p. 783. But the misuser of one of se-
veral franchises, not dependent on
each other, is not a forfeiture of
the whole, but of the one only
which has been mis-used; *contra*,
if the one is wholly dependent on
the others. Br. Franchises, pl. 14.

(441) *Ante*, pt. 1. pa. 9.

CHAP. XVIII.

OF THE JURISDICTION OF COURTS LEET.

Origin and Nature of the Court Leet.

THE leet, which is a court of record (1), is described as one of the most ancient tribunals noticed by our common law (2), and is accounted the King's Court, for although this franchise is frequently held by the lord of a hundred or manor, under a grant from the crown, or by prescription, which presupposes such grant (3), yet the lord is entitled only to the profits of the court (4), and (in legal phraseology) the day is to the King (5).

The great resemblance which the leet jurisdiction bears to the Anglo-Saxon institutions would seem fully to justify the above notion of its great

(1) Br. tit. Leet & Tourn, pl. 39. F. N. B. 82. 2 Inst. 143. 4 Inst. 263. Kitch. 82. Hetl. 62.

(2) 7 H. 6. 12. 2 Inst. 70. 3 Burr. 1860. And it is said to have been ordained by King Alfred. Mirr. c. 1. s. 3. *Bullen v. Godfrey*, 1 Roll. Rep. 73. Judge Jenkins in his *pacis consultum*, written during the Commonwealth, states (p. 1.) that the court leet was established long before the Conquest.

(3) 2 Inst. 72. Finch's Law, 246. F. N. B. 160-1, & the notes. Co. Cop. s. 31. Tr. 51.

(4) 41 E. 3. 26. Br. Leet, 4. Kitch. 82. The lord of a leet cannot claim the wastes by prescription, which may belong to one who has a manor without a leet. See 9 H. 6. 44, cited, Br. Leet, 2.

(5) 41 E. 3. 28. 44 E. 3. 19. Br. Leete, pl. 4, 5. Kitch. 82. 2 Inst. 140. Co. Litt. 117 b.

antiquity, but I do not find that the term *leet* is mentioned in any historical work illustrative of the Anglo-Saxon jurisprudence.

The court leet is by some writers said to be derived out of the sheriff's *tourn* (6); but the observation may, I think, be considered as a mere *obiter dictum*, as far, at least, as it may tend to impugn the opinion of many of our ancient law authorities, that the jurisdiction and privileges of the leet were purchased of the crown by thanes or barons, and others of large territorial possessions, in order that the people might have justice rendered to them nearer to their own homes; and whereby I conceive the power of the sheriff, in his *tourn*, was superseded, or at least suspended, to the extent of the local confines of each particular grant.

It is probable that the Anglo-Saxon kings, soon after their incursions into this country, divided their territories into shires or counties, and townships, in imitation of their continental subdivisions, called by the Romans *pagi et vici*, as such divisions are frequently mentioned by historians before the end of the heptarchy (7); and it seems equally probable, that King Alfred, who has the credit of that great and judicial polity, was not in fact the first to introduce the division

(6) 4 Inst. 261. Crompt. 230 b.
Shepp. Court Keeper's Guide, 4.

(7) See 3rd vol. of Henry's
Hist. of Great Britain, p. 311.

of the kingdom into counties; but our historians certainly appear to be agreed, that he made a new and more regular division of it, differing from that which subsisted under the heptarchy, and probably introduced the sub-divisions of shires or counties into *trithings*, or *laths*, or *rapes* (8); and without doubt he has the merit of the still further subdivision of *trithings* into *hundreds*, and of each hundred into *decennaries*, *tithings*, or districts, consisting of about ten families.

The nature and extent of the court leet jurisdiction, in its first institution, may probably be best illustrated by a brief view of the different ranks of people, and of the mode of administering justice in the Anglo-Saxon æra.

The lowest orders of the people were complete slaves, either by birth or by forfeiture of their freedom by crimes or breach of faith, and were incapable of any office of trust or honour; but the introduction of christianity led to frequent manumissions, and established another class of people called *frilaxin*, and persons so made free were considered to be in a middle state only, between slaves and freemen.

Those who were freemen from their birth were called *ceorls*, and constituted a middle class between the nobility and such labourers and mechanics as were slaves, or descended from slaves; and

(8) *Ib.* 317. Spelm. Vita Ælfrida, p. 74. St. Amand, Hist. Essay, p. 68.

being generally devoted to agriculture, a *ceorl* was the usual name for a husbandman or farmer; but the acquisition of five or more hydes of land, the attainment of priest's orders, or making three voyages beyond sea in his own ship and with his own cargo (9), advanced a *ceorl* to the dignity of a thane; and his degree of nobility was considered to be higher than the next description of thane I shall notice.

A *ceorl* who had a propensity to arms, often became the attendant of some warlike earl, and was called his *huscarle*; and by obtaining a reward from his patron, in land or warlike habiliments, was likewise considered as a thane, and this was the lowest degree of nobility. The higher class of thanes were denominated kings' thanes, and appear to have been of three different degrees.

The thanes were the only nobility among the Anglo-Saxons, but the princes or members of the royal families were of a still superior rank.

With respect to the Anglo-Saxon jurisprudence, it should be premised that the kings were considered as the chief judges in their respective territories, and frequently administered justice in person. Alfred the Great, we are told, sometimes employed both day and night in hearing causes on appeal, with the aid of learned men, acting as assessors, and forming a supreme court of justice.

(9) 3rd vol. Henry's Hist. of G. B. p. 325. St. Amand, p. 73.

But after the establishment of monarchy, it was found to be necessary to appoint a Chief Justiciary, to preside in the King's Court in his absence; and the first institution of that office is supposed to have been at the time of the incursion of the Danes.

The supreme tribunal of our Anglo-Saxon ancestors was the WITTENA-GEMOT (10); which was not only a court of civil and criminal jurisdiction, but all the affairs of state, political and ecclesiastical, were there debated and regulated (11).

The ordinary assembly of the members of this court appears to have been at the festivals of Easter, Whitsuntide, and Christmas, it being the prerogative of the king to appoint the time and place of their meetings; but on very solemn and important occasions, all the constituent members were summoned, who being numerous, and the persons interested in their debates being still more so, the wittena-gemot was frequently held in the open air, on some extensive plain (12), and on the banks of

(10) Witena-gemot or assembly of wise men, Wilk. L. Sax. p. 14, 72, 76-9, 102, &c. Spelm. Gloss. in voc. Hist. Elfrici. c. 10. 3 vol. Henry's Hist. of G. B. 372. Turn. Hist. of the Angl.-Sax. 220, 261.

(11) 3 vol. Henry's Hist. of G. B. p. 369.

(12) 1 Tyrr. Hist. Engl. In-

trod. civ. cv. Camd. Brit. Isle of Man. Spelm. Gloss. voc. Mallobergium. Eadmer. 9, & Seld. Spicileg. 197. Lamb. Peramb. Kent. 441-3, tit. Eareth. Mr. Watkins in his 2nd vol. on Cop. [p. 10.] notices that the Welch and Irish, and other ancient nations, held also their courts of justice in the open air, and generally

a river near a large town, for the benefit of water and provisions (13); and often under a large tree, for the convenience of shade and shelter (14).

The next court in point of importance of Anglo-Saxon institution was the *SHIRE-GEMOT*, which was for the trial of both criminal and civil causes; and here transmissions of real property were recorded, and ecclesiastical affairs transacted (15). The shire-gemot was held in each county twice in every year, viz. in the Spring and Autumn; and was attended by the bishop and clergy of the diocese, the *alderman* (16) of the shire, the *shirege-*

on the slope of a hill; and adda,
 "Indeed so prevalent was this cus-
 "tom among the Britons, that the
 "top of a hill or eminence became,
 "at length, significative of a court
 "of justice; and the names of
 "several persons who had juris-
 "diction were allusive to it;"
 [citea Owsep's Welch Dict. voc.
 Bre, Brezyn, Breyn, Crug, &c.]
 "And vestiges of this custom re-
 "main among us to this day in the
 "*Moet, or Mute, or Parling Hills,*
 "still known in various parts of
 "this and the neighbouring is-
 "lands," [citea Spelm. Gloss.
 "v. Mallobergium, & Whit.
 "Maach. B. 1. C. 8.]

(15) Henry's Hist. G. B. 3rd
 vol. p. 373. For the names of the
 places where the Wittena gemots

met, see Hody's Hist. of Convoca-
 tions, referred to id.

(14) Edda. Fab. viii. North
 Antiq. vol. ii. p. 53 n. (A). 1 Tyrr.
 Hist. Engl. 160. Transl. Mall. vol.
 ii. p. 56. And see 2 Watk. on Cop.
 p. 9 to 16. Kennet's Paroc. Antiq.
 Glos. v. Franciplegium.

(15) Vide Turner's Hist. of An-
 glo-Sax. p. 192, 261.

(16) The earldorman [or alder-
 man] or, as he was called in the
 Danish times, the *earl*, of a shire
 or county, was a person of the
 highest dignity and greatest power
 among the Anglo-Saxons, and
 this magisterial office was gene-
 rally enjoyed by the thanes of the
 largest estates and most ancient
 families. 3rd vol. Henry's Hist. of
 G. B. p. 342.

rieve (17) law-men, magistrates, and thanes (18). The court, after a discourse from the bishop on their relative duties as Christians, and from the alderman or one of his assessors, on the laws of the land, and the duties of good subjects and citizens, proceeded to try, first, the causes of the church, next, the pleas of the crown, and lastly, the controversies of private parties (19). The decision on evidence of facts appears to have been by the votes of the whole assembly, collected by the law-men; who, when any question of law arose, answered it by the *dome-boc* or law-book (20).

(17) The *shiregerieve* was an officer appointed in every shire, inferior in dignity to the alderman, and who acted as his assessor and chief minister when present, and supplied his place when absent. 3rd vol. Henry's Hist. of G. B. p. 344.

(18) It seems to have been the royal prerogative, both before and after the establishment of monarchy, to appoint the *aldermen*, *shiregerieves*, *domesmen*, and other civil and military officers, but this power was at length vested in the Wittena-gemot. 3rd vol. Henry's Hist. of G. B. p. 361; or in the shire-gemot, see *ib.* p. 343.

(19) 3rd vol. Henry's Hist. of G. B. 348.

(20) It appears that independent of the wittena-gemot and

shire-gemot courts, a special general *placitum*, or plea of land, was frequently held in different parts of England, as might best suit the parties in the cause. Turner in his Hist. of the Anglo-Sax. (p. 193, &c. 264), has selected several cases of the kind from ancient documents; one in which a *general placitum* was held first at London, and in a few days after at Northampton, and subsequently, on the death of one of the parties at Walmesford, in eight hundreds; and another in which 'a *great placitum* of the citizens and hundreds' was held at Cambridge.

A great gemot or general placitum was sometimes convened from eight hundreds and sometimes from three. 3 Gale 469, 473, cited Turn. Hist. of Anglo-

The shire-gemot often continued for several days, without finishing the whole of its business; so that another court called a *county court* was directed to be held by the shiregerieve, from four weeks to four weeks, to determine the causes left undecided at the shire-gemot (21).

It was originally the province of this subordinate or county court, to hold also an inquest or view of frank-pledge (22), to see that every person above twelve years of age was in some tything or decenary, and had taken the oath of allegiance, and found security to the king for his good demeanor.

Dr. Sullivan, in his lectures on the laws of England (23) observes that, "since the time of King Edgar, at least, this court has been divided into two, the criminal matters, both ecclesiastical and civil, and also the view of frank-pledge, were dispatched in one court called the *tourn*, that is, the *circuit*, from the bishop and sheriff's going circuit through the country; and the civil business was dispatched in another, called the *county court*. The law was, that the sheriff and bishop

Sax. 202; who also notices, that by the laws of *Canute* it was ordered that there should be two shire-gemots, and three burgh-gemots, every year, and that the bishop and earldorman should attend then, for which is cited, Wilk. p. 136.

(21) These subordinate county courts appear sometimes to have

been called *folckmotes*, and the shiregerieve, the law-men, and the parties and their witnesses in the causes to be tried, were alone obliged to attend them. See further as to folckmotes, *post.* p. 804.

(22) See further as to this subject, *post.* p. 815, *et seq.*

(23) P. 269.

“should twice in the year (24) go their circuit or
 “tourn, namely, in the month following Easter,
 “and the month following Michaelmas; and should
 “hold their court in every hundred of the county;
 “but the view of frank-pledge was to be taken
 “only once a-year, namely, the tourn after Easter.
 “But for the more ready dispatching civil causes,
 “the county court was held once a month, that is
 “in twenty eight days, reckoning a month by four
 “weeks, and not by the calendar.”

There would appear to have been several courts of judicature established on the subdivision of shires or counties, possessing a similar jurisdiction to the shire-gemot, but which were nevertheless subordinate to it, each court in its order of superiority having an appellant jurisdiction.

The one which was next in point of importance to the shire-gemot, I apprehend, was the *trithing court*, in which the *trithing-man* or *lathgrieve*, who was the next magistrate below the *alderman*, and above the *hundredary*, presided; and this court was composed of the members of three or more hundreds within that division of the county which was called a *trithing*, *lath*, or *rape*.

This court is stated by our chroniclers to have been discontinued at an earlier period than those I am about to mention, and to have left but few vestiges behind it (25).

The next court in order of superiority was the

(24) See Powell on courts leet,
p. 13.

(25) 3rd vol. Henry's Hist. of
G. B. p. 342.

hundred court, and this had jurisdiction over ten tithings, or that division of a county which was termed a *hundred*, and the presiding magistrate at this court was called the *hundredary*, who was generally a thane residing within the hundred, and elected to the office (considered to be both honourable and lucrative) by the other members (26).

This court usually met once every month, and all the members, in imitation of their German ancestors, appeared in their arms (27), it being a custom, at the opening of every meeting, for each of the members to touch the hundredary's spear with his own, in token of their submission to his authority, and of their readiness to fight under his command (28).

The archdeacon, and sometimes the bishop, presided in this court with the hundredary, and it should seem that the court had no power to condemn any person to death or slavery (29).

The chief court in cities and towns appears to

(26) 3rd vol. Henry's Hist. of G. B. p. 339.

(27) And this obtained for it the name of the *Wapentac*.

(28) 3rd vol. Henry's Hist. of G. B. p. 340, cites Wilk. Leg. Sax. 303.

(29) 3rd vol. Henry's Hist. of G. B. p. 340, who also states that the proceedings of this court were summary, and that all questions were determined by the votes of the members collected by the

hundredary, who could only pronounce the sentences.

The Anglo-Saxon hundred court seems to have survived the trithing court, and to have been discontinued in the reign of Edward the Third; but there are hundred courts existing at this day, possessing both civil and criminal jurisdiction, under the title of courts baron and courts leet, and which probably were granted to barons and others of

have resembled the hundred court (30), and to have been called the *burgemote*, or *folc-gemot* [*or folckmote*], and was composed of all the burgesses, the presiding magistrate being called the *alderman* or *towngerieve*, and in sea-ports, the *portgerieve* (31). This court was held monthly, and on particular emergencies the chief magistrate had authority to convene special meetings by the sound of the *mot-bell* (32).

We have already seen that each hundred division was again divided into ten tithings, each tithing consisting of about ten families. One of the most respectable members of each tithing was elected the chief magistrate, and was sometimes called the *alderman* or *freeburgh*, but more commonly *borsholder*, or *tithingman* (33).

An assemblage of the tithing, with this magis-

great rank on the decline of the Saxon jurisprudence. And hence, I apprehend, the *baron's mote* or *moot court*, as distinguishable from the court baron incident to every manor, and which latter court, as we have seen, is not a court of record. *Ante*, p. 687.

There are, however, hundred courts, without the appendage of a leet franchise, and then they are merely courts baron; the freeholders being the only suitors, and being also judges of the court.

(30) Lord Coke observes that the wardmote in the city of London is derived from ward and mote, that is, the ward court, and adds; "In London the parishes are as towns,

and the wards are as hundreds." 4 Inst. 249.

(31) In sea-ports and haven-towns, the court resembling the hundred court, was called the *portmote* or portmoot court, *curia portus*. 4 Inst. 148.

(32) Wilk. Leg. Sax. p. 204. "Folc-gemots were ordered not to be held on a Sunday; and if any one disturbed them by a drawn weapon, he had to pay a wite of one hundred & twenty shillings to the ealdorman." Turner's Hist. of the Anglo-Sax. p. 264, cites Wilk. 42.

(33) From the Saxon word *borh*, a surety, and *alder*, a head or chief. Spelm. Gloss. p. 86.

trate at their head, constituted a court of justice ; and it was the duty of the borsholder or tithing-man to convene the members of his tithing, and to put their sentences into execution ; and if not submitted to, the cause was referred, by way of appeal, to the next superior court.

Besides the hearing and determination of controversies arising among the decennaries, it was customary at the tithing courts for each member to produce his warlike habiliments to be inspected, and at these courts new members were admitted, and testimonials given to those who had occasion to remove into other tithings (34).

The subdivision of each hundred into tithings or decennaries was admirably adapted for the preservation of the peace and good order of society ; for it appears that all the members of each decenary or neighbourhood (as it was sometimes called), and who were of the same rank (35), were pledges or sureties for the good behaviour and probity of each other ; so that if any member committed a crime, the tithing or decennary by which he was

The office of *constable*, at the present day, seems to correspond with that of *borsholder* in the Saxon era ; for the terms *tything-man* and *borsholder* are frequently used in modern statutes as synonymous with *constable* and *head-borough*. Sometimes where two constables are chosen at a court *leet*, for a particular township or parish, another officer is elected for

the same precinct, called a *third-borough*, who acts as an assistant constable.

(34) 3rd vol. Henry's Hist. of G. B. p. 334-5.

(35) Thanes were not members of any tithing, the family of each thane being considered as a separate tithing, and he himself responsible for all the members.

pledged, were within one and thirty days to bring him forth, to answer for the offence; and on failure of so doing, they were compelled to pay the mulct prescribed by the law for the crime committed; unless indeed they could prove on oath before a magistrate, that none of the members were accomplices in the crime, and also engaged to bring the offender to justice as soon as they could apprehend him. So again if any member sustained an injury or loss, the rest contributed to redress or repair it; and in case of gross misconduct, the offender was expelled the decennary, and became an outlaw and vagabond (36).

In further support of this highly political arrangement, (and upon patriarchal principles,) the head of every family was under a heavy responsibility, and had great authority over all the members of his family; and became also responsible for the good conduct of every stranger staying with him for three days and nights.

During the Anglo-Saxon æra, the sovereignty and the police of the country were still further maintained by an obligation imposed on every person above the age of twelve years, (with, perhaps, all or some of the exceptions I shall presently mention, in tracing the similarity of the leet jurisdiction, and the Anglo-Saxon toun), to swear

(36) 3rd vol. Henry's Hist. of G. B. p. 337. The members of a decennary, were sometimes called *deciners* or *deziners*. The term *dizein* we also find used by some of our ancient law authors. See *Mirr. c. 1. s. 17*. Hence, probably, by a misprint or corruption, the terms *doziners*, and *dozein*.

allegiance to the King, and submission to the laws, before his countrymen in the hundred court or *fole-gemot* (37), on pain of an imprisonment, after which he became law-worthy, or a *legalis homo*; and this, as we have already seen, was enquired of in the division of the subordinate shire-gemot or county court, termed the inquest or view of frank-pledge (38).

It may be difficult to determine at what particular period the court leet was established, as an appendant juridical franchise, and whether before or after the discontinuance of the Anglo-Saxon *trithing* and hundred courts.

And although the appendancy of the court leet to a hundred or manor, may be thought to furnish evidence of its being of feudal origin, yet if it be true that the word leet is of Saxon derivation (39), the affirmance of the existence of the court, even before the conquest (40), is greatly strength-

(37) 2 Inst. 70.

(38) Sulliv. 289. *Ante*, p. 801.

(39) Lord Coke informs us that *leth*, *leth* or *leet* is a Saxon word, and cometh of the Verb *gelaþian* or *geleþian* (g being added *euphoniae gratia*); i. *convenire*, to assemble together, *unde conveniunt*, 4 Inst. 261. It is also said to be derived from the Saxon word *let*, signifying *censura*, *arbitrium*, "because this court redressed wrongs by way of judgment against any person of the frank-

pledge, who had done any wrong or injury to another." *Lex. Map.*

131. And again it is supposed to be derived from the Saxon *leod*, *plehs*, and to mean the *populi curia* or folkmote. See Ritson on court leet, in the introduction. It rather appears to me, however, to be derived of the Saxon word *let*, to assign, [or grant], being a juridical franchise held by a subject under a grant from the crown.

(40) *Ante*, p. 794. And we are told that the carls of each county,

ened; and it may be proper to notice, that the tenure of land in England in the Anglo-Saxon æra, is very far from supplying an argument unfavorable to the supposed appendancy of the franchise to a hundred or manor at that period, as it appears that the Saxon tenure bore a strong affinity to the free socage tenure existing in England at the present day; for the Saxon lands in general were allodial, but subject to military services; and were not only descendible (41), but alienable at the pleasure of the owner, and devisable.

In taking leave of the judicial polity of our Anglo-Saxon ancestors, and previously to entering on an enquiry into the constitution and authority of the court leet, as it appears to have existed from the period of the Norman conquest, it should be mentioned that the Wittena-gemot court, and those I have noticed of a subordinate jurisdiction, would seem to have been continued for a considerable time after the conquest; but William the Conqueror becoming jealous of the legislative functions of this assembly, established a constant court in his own hall (42), thence called *aula regia*, or

and the *lords of each leet*, and likewise representatives of towns, chosen by the burgesses of the town were summoned to the Wittena-gemot. See Lamb. Arch. 239, cited 2 Bac. Abr. p. 94.

(41) The descent of Saxon lands was to all the sons equally,

as gavelkind lands in Kent, which seems to be a customary relic of Saxon law, and, like gavelkind lands, they were not forfeitable for felony. Sulliv. 278.

(42) *Aula, halla*, or *halla*, a hall or chief mansion house, was the usual appendage of a manor.

aula regis (43). This court was composed of the officers of the King's palace, of which the justiciar [*capitalis justiciarius totius Angliæ*] was the president; and who was also the principal minister of state.

The *aula regis* removed with the King from one part of the kingdom to another; and all matters both civil and criminal, and regarding the revenue, were transacted there (44).

Domesd. tom. i. 21 b. Ib. 285 b. Ib. 286 b. Ib. 12, 293, 307 b. 308. Ib. 368 b. Ib. 63. Ib. 309. Ib. 29 b. Ib. 32 b. So *caput manerii*, 1 vol. 11, 26, 166. 2 vol. 227, 293 b. See App. to 2nd Gen. Rep. of the Comm. of Pub. Rec. p. 441. So the term *hall* is sometimes applied to a court baron; and hence also the *town-hall*, *shire-hall*, &c. 2Watk. on Cop. 18. Hence too the Hallmote courts in the city of London. 4 Inst. 249.

In Yardley Hastings in Northamptonshire, and many other places, the manor court is opened in an ancient hall, and then, from its dilapidated state, adjourned to some inn, or other convenient place within the manor.

(43) According to Sullivan, this court existed even in the Saxon times, under the term *curia regis*. See his Lect. on the laws of England, p. 271; and I appre-

hend that the Wittenagemot was a branch of this court.

(44) The latter were heard in the Treasury, called the Exchequer from the chequered cloth wherewith that table was covered; but all criminal matters were heard only in the hall; the civil pleas were heard in either court. This was the sovereign court of the kingdom [Mad. c. 8.], where justice was administered by the King himself and his officers; consisting of the *justiciar*, the chancellor [who formed all patents, and had the custody of the seal both for writs and patents], the *treasurer* or *auditor* [who presided in matters relating to the revenue], the *constable* and *marshal* [who determined all matters of war and peace, according to the law of nations and of arms], the *seneschal* or *steward & marshal* [who determined all quarrels between the King's menial servants,

In some cases of very great importance, as upon the levying of war, or raising an escuage, it was customary to summon to the *aula regis* those who held of the King *in capite*, and this is considered to have been the foundation of the English Parliament, as far as regards the jurisdiction of the Upper House, but whether the Commons of England made part of that assembly, or at what period the lower house was instituted on its present representative system, does not clearly appear (45); the better opinion, however, is that the *barones majores* (46), were alone summoned to the *curia regis*, and that the *barones minores* first sat by representation, in the reign of Henry the third (47), the overwhelming influence of the greater barons inducing the institution of this popular assembly (48).

The power of the justiciar (49), and of the

and had the charge of the prisoners, and the control of the King's household], and the *chamberlain* [who had the charge of the King's money issued out of the treasury].

(45) The Commons of England certainly appear to have formed part of the *Wittena-gemot* courts, or parliamentary assemblies, in the Saxon æra.

(46) *Ante*, p. 686. n.

(47) Brady's answer to Petit 133. *Camd. Britt.* 13. Dugd.

Orig. Jur. 18. But see 4 *Inst.* 2, where Lord Coke says that lords and commons of ancient times sat together, and refers to *Rot. Parl.* 5 E. 3. nu. 3.

(48) *Spelm. Gloss.* 69. *Seld. tit. Hon.* 692. Selden does not determine the point, but [p. 704. *ib.*] says that it was attempted, 17 John, to bring in the *barones minores*, as appears by the great charter granted by him at Runnymede.

(49) This power is represented

barons becoming equally a subject of jealousy with the crown, it was deemed necessary to introduce a new judicial policy, which gave rise to the courts as they now exist in Westminster Hall. And to obtain countenance to this division of the courts, the King himself sat in person in the Court of King's Bench, and hence the power which that court still retains over other jurisdictions, and the idea of the King being always present in it (50).

When the courts of Westminster Hall began to draw to themselves the jurisdiction of the courts existing under the Anglo-Saxon jurisprudence, and after this important change in the administration of justice had introduced the offices of *justices errant*, or *itinerant* (51), *justices of assise* and of

by Sir William Blackstone to have induced King John to consent to that article which forms the 11th chapter of Magna Charta, and enacts that "*communia placita non sequantur curiam regis, sed teneantur in aliquo loco certo.*" 3d vol. Com. p. 39.

(50) Bacon. Abg. 2. vol. 95.

(51) Mr. Ritson in his useful little treatise on courts leet [p. 7. n. u], in adverting to the practice among our ancestors of administering justice in the most public manner, and generally, for the convenience of the suitors, in the open air (see *ante*, p. 798-9),

and as a curious illustration of that principle, observes "that
" the justices itinerant in the time
" of Edward the First, sat at the
" Stone-cross (opposite the Bishop
" of Worcester's house, now Somerset-place), in the Strand.
" This venerable monument, which
" was even then ancient, (Pat. 4.
" E. 2. pl. 2 m. 15. d.) is mentioned by Stow as standing
" headless in 1598. The justices
" probably in bad weather sometimes sat in the bishop's house;
" as the steward or bailiff of a leet
" would, for the same reason, occasionally do in the church,

gaol delivery, and of *the peace*, with the courts of *quarter sessions* &c. the jurisdiction of the county court was restrained to pleas of debt not exceeding 40*s.* and all pleas of land were discussed in the higher tribunals; and in course of time the various *mote* or *moot* courts we have spoken of, fell altogether into disuse. Nor was it likely that the leet, so analogous in its juridical character and powers, to that branch of the county court which is called the Sheriff's Tourn, should long survive the shock of this great innovation, and hence may be traced the very mouldering state of that once venerable fabric, the *Court Leet*.

It is clear, however, that the ancient powers of the leet are but little circumscribed by any legislative ordination; on the contrary, that they have been recognized and enlarged by several acts of parliament: I shall now therefore the more unhesitatingly proceed to a further illustration of the constitution, and to an enquiry into the present practice, of this relic of Saxon jurisprudence.

"where, notwithstanding a canon
 "(1 Burn. E. L. 361), it is in
 "many places still held." And
 in another part (p. 15.) the same
 author observes, "Dr. Hickes
 "thought that justices itinerant

"were originally instituted by
 "Henry II. *Dis. Epis.* p. 8. 48;
 "but Mr. Madox has produced
 "evidence of their existence in
 "the reign of King Stephen.
 "(*Hist. Ex.* p. 100)."

(Appendancy of the Leet (52).)

It will necessarily be inferred from the preceding observations on the nature and origin of the court leet, that it may be appendant to a hundred (53), or to a manor (54). And although there possibly may be instances of leet jurisdictions existing by prescription (55), as separate and unappendended franchises, yet as the court was instituted under the powerful influence of the ancient thanes or barons, to invest them with precisely the same judicial character as the sheriff in his tourn, and for the ease of their tenantry, (who were thereby excused

(52) The style of the court is "The court leet with view of frank pledge of E. C. Knight, held &c." and if appendant to a manor and held with the court baron, it may be thus, "The court leet with view of frank-pledge, and court baron, of E. C. Knight, for the manor of S. &c."

(53) And see 8 H. 7. 1. Mar. 75. *Lord Norris v. Barret*, Mo. 426. *Lawson v. Hare*, 2 Leo. 74. 2 Inst. 122. — but Kitch. (p. 78) says that a leet is of necessity incident to a hundred, and cites the above case from the year books (8 H. 7. 1); and see Br. Leet. 23, citing 13 H. 7. 19. But it has been held that a leet is not incident to a hundred, as one liberty cannot

be incident to another, but that a leet may be appendant to a hundred, 12 H. 7. 16. Br. Leet. pl. 24. Ib. Incidents, pl. 18.

(54) 33 H. 6. 4. 18 H. 6. 11. Br. Incidents, pl. 2, 29. 1 Leo. 218. Where three *coparceners* were seised of a manor in fee, to which a leet was appendant, and the King purchased two parts of the manor, it was adjudged that the leet was still appendant to the third part of the manor. Bendl. 11, pl. 45. 1 And. 26. Dy. 30 b. pl. 209.

(55) A title to a leet may clearly be made by prescription only. Co. Litt. 114 b. 2 Inst. 72. *Ante*, p. 794. But it gives no title to the wastes. Br. Leet, 2. *Ante*, n. 4.

from attending the tourn, held, perhaps, at some distant part of the hundred (56), it is very possible that such franchises, if any do exist, were originally granted by the crown, with reference to some manorial possessions, over which the grantee exercised baronial powers; though the fact is incapable of being established at this far distant period, in the absence of the original grants, and also, perhaps, of the more ancient court rolls.

A leet may also be appendant to a vill, or to an ancient messuage (57), but it cannot be prescribed for as appendant to a church or chapel (58).

When a leet exists in a borough or town, and the powers of the court are exercisable by the mayor, or other chief magisterial officer, and there is no trace of its original institution, it is not devoid of probability that the jurisdiction does not exist under a grant from the crown, as an appendant franchise, but that it is a more immediate vestige of the Anglo-Saxon jurisprudence, the term *leet* now used in the style of the court, having, in the adaptation of modern terms to ancient institutions, succeeded to that of *folcmote* (59).

(56) *Ante*, p. 795.

(58) 10 E. 3. 5. 18 H. 6. 11.

(57) 18 H. 6. 11. Br. Incidents 29. For it may be presumed that the house is the site of a manor. See *Gittins v. Cooper*, 2 Brownl. 217.

Fitz. Leet 8. Br. Incidents 29. And see 2 Brownl. 200.

(59) *Ante*, p. 804.

(When the Court Leet is to be held.)

By Magna Charta, c. 35, no sheriff or his bailiff shall keep his tourn in the hundred but twice in the year, once after Easter, and again after the feast of Saint Michael (60), and the view of frank-plodge (61), shall be at the feast of St. Michael, 'so that every man may have his liberties which he had or used to have in the time of King Henry our grandfather, or which he hath purchased since;' but this clause of the above statute is to be understood of the leet of the tourn, and not of other leets (62); at least not to such as were granted to private persons previously to that statute (63).

A leet held by charter, must be kept on the day or days which may be stated in the charter, and when held by prescription, it is to be kept on

(60) And by 31 E. 3. c. 15, every sheriff shall make his tourn yearly one time within the month after Easter, and another time within the month after Saint Michael; and if held in any other manner it is void. Fitz. Tourn, pl. 2, cites 38 H. 6. 7.

(61) Meaning that part of the business of the tourn which related to the taking of sureties. *Ante*, p. 801-2. Co. Litt. 115 a. n. 10.

(62) 2 Inst. 72. N. 11. Co. Litt. 115 a. And see 24 H. 8. Br. Leet 23. 1 Roll. Rep. 261. 2 Leo. 74-5, in *Lawson v. Hares*. Fitz. tourne, pl. 2. But there are authorities to the contrary. Kitch. 88. *Per Rhodes*, 2 Leo. 74. Hal.

H. P. C. 71. *Dakin's case*, 2 Saund. 290. W. Jones 290.

(63) See 2 Hawk. P. C. 56, where it is said "it seems that no court leet granted since the statute, can be holden at any other time than what is limited by it, because every such court is derived out of the tourn:" But as to the reason here given: see *ante*, p. 795.

Whether there is any distinction in this respect between leats claimed by grant and those claimed by prescription, see *Porter v. Gray*, Cro. Eliz. 245. And note that "The King hath power to make and create a leet anew, where none was before." 1 Brownl. 36.

such certain day or days as may have been the immemorial usage (64); and a court leet may be held even oftener than twice in the year, by prescription (65); and when the established period is a month after some certain feast, it is to be accounted a lunar month, twenty-eight days (66).

A court leet, it should seem, may be adjourned if the business of the particular court require it, and this should be done by three proclamations (67).

(Where to be held, and of the proper notice.)

*use on
res debits
& credits*
The leet of the tourn, or sheriff's frank-pledge is by the statute of Magna Charta, c. 35, to be kept in certo loco ac determinato within the precinct (68); but it should seem that courts leet of lords of hundreds or manors may be held in any place within the precinct, where the lord shall please (69), and they are sometimes held in the church or chapel. There is, however, a canon prohibiting the keeping of temporal courts, *leets*, or lay juries, in the church, chapel, or church-yard (70).

(64) 2 Inst. 72. Kitch. 88. Br. Leet 32. And once or twice a year on reasonable warning, if the court have been kept at uncertain times. 2 Inst. 72. But it cannot be held on a Sunday. 2 Saund. 291. 1 Vent. 107.

(65) *Edwards v. Hughs*, Gilb. Eq. Rep. 209. 8 Mod. 297 (*Morgan's case*). 1 Roll. Rep. 201. *Partridge's case*, 2 Leo. 28. The *Queen v. Jennings*, 11 Mod. 228.

Keilw. 148. Co. Litt. 115 a. *Ante*, n. 62.

(66) Cro. Jac. 167.

(67) Scroggs 26. And see Kitch. 11.

(68) Scroggs 83. Co. Cop. a. 31. Tr. 50.

(69) Br. Court Baron 8, cites 8 H. 7. 3. Ow. 35. *Per* Bryan Kitch. 88, citing 8 H. 7. 4.

(70) 1 Burn. E. L. 361. (Cam. 88.)

It is usual for the bailiff to give fifteen days notice of the court leet (71), by virtue of a precept from the steward of the manor, which, in the more ordinary form, commands the bailiff to warn the tenants and resiants to appear at the place and time appointed for holding the court, and to summon twenty-four honest and lawful men of the hundred or manor, to enquire for the King of all matters appertaining to the leet, and the bailiff to attend with the names of the persons he may have summoned.

I apprehend that notice of the court leet need not be personally served on the suitors, but that it may be given in the church or market, according the general usage of the particular place, though if it be not an ancient leet (72), personal notice is said to be necessary; and clearly no person could be amerced for non-attendance, unless the accustomed warning had been given (73).

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| (71) "About fourteen days." | 283. Br. Action upon the case |
| Jenk. Pac. Cons. 2, 3. "Six or | 75. And see Rits. of courts leet |
| "more days." Scroggs 13. But | 41. |
| in the absence of an established | (72) <i>Brook v. Hustler</i> , 11 Mod. |
| usage, three or four days notice | 76. <i>Ante</i> , p. 815. |
| only would seem to be sufficient. | (73) Br. Action upon the case |
| Greenw. of county courts, &c. | 75, cites 38 H. 6. 16. |

SUIT REAL. Prior to the statute of Marlborough (74), (as may be collected from the preceding observations illustrative of the Anglo-Saxon jurisprudence,) all persons of whatever rank in life, both men and women (75), servants (76) as well as masters, from the age of twelve to sixty years (77), were compellable to attend the tourn in which they had been commorant or conversant for a year and a day (78), with the exception only of clergy having *curam animarum* (79); but by that statute, archbishops, bishops, abbots, priors, earls, barons, religious men and women are excused from attending tourns, 'unless their appearance should be especially required thereat for some other cause (80);' and persons having tenements in different hundreds, are by the same

(74) 52 H. 3. c. 10.

(75) But women were never sworn to allegiance in tourns or leets. Co. Litt. 122. b.:—for women and infants under twelve years, are equally out of the law. F. N. B. 161 A.

(76) Fitz. Lete et Hundr. 5, cites 2 H. 4. 16. A custom for servants to be sworn before the constable and portreeve, who have no power to hold a leet, is not good. Br. Leet 10, cites 2 H. 4. 15.

(77) Britt. c. 29. Flet. 1. 2. c. 52. Mirror. c. 1. a. 17. 2 Inst. 120-1. Br. Incidents 28.

(78) 7 E. 2. 204. 8 E. 2. 276-7.

(79) 2 Inst. 121.

(80) Britt. c. 29. 2 Inst. 120-1. But the exemption is personal, and therefore the proprietor of lands which are parcel of a dissolved monastery, held in frank-almoign, and discharged of secular services, is not exempt from attending the court leet. *Dacre v. Nixon*, 2 Roll. Rep. 56.

Tenants in Ancient Demesne are also exempt from suit to the sheriff's tourn (*ante*, p. 657, n. 26); and possibly therefore from suit to the leet. Br. Leet. 38. And I imagine that a barrister or attorney, whose attend-

statute excused from attending any tourn, but in the bailiwick where they dwell (81).

We have seen that Lord Coke was of opinion that the statute of 9 Hen. 3. c. 35, extended only to the leet of the tourn, and not to the leets of private persons (82); but we learn that he put an opposite construction on the above statute of 52 H. 3, and thought that the exemption of the latter act extended not only to the King's view of frank-pledge, but to the views of frank-pledge of other lords (83). It is difficult, however, to reconcile this distinction with the language of the two statutes. The first expressly limits the period of holding the *view of frank-pledge* to the feast of Saint Michael, and then, having used a term equally applicable to the franchises of individual persons, it excepts all existing liberties of the like nature (84); but the latter statute, it is to be observed, speaks only of the *tourns* of sheriffs, and of *baili-*

ance is required in the King's courts at Westminster, could not be amerced for not doing suit at the leet. 1 Vent. 16, 29. And see 1 Mod. 22, ca. 60. 1 Sid. 431, ca. 19. Aliens are incapable of being *sworn* in leets. Palm. 14. Viner Alien. (A. 3.) Br. Denizen, pl. 2. Mirror, c. 1. s. 17; but the better opinion seems to be, that they are not exempt from attending the court leet. Mirr. c. 5. s. 1. 1 Hale, H. P. C. 64. 2 Inst. 121.

(81) 2 Inst. 132. Fitz. Lete et Hund. 1.

(82) *Ante*, p. 815.

(83) 2 Inst. 121-2.

(84) And see in the Appendix the act of 1 Ed. 4. c. 2. interdicting sheriffs &c. in their tourns or *law days* from fining and imprisoning upon any indictment or presentment, and which expressly excepts out of the operation of the act persons having liberties or franchises by grant or prescription.

wicks within which *such* tourns were held, and does not use the term *frank-pledge*.

It is, at all events, the better opinion that no man can be of two leets (85). So if a man hath a house within different leets, he shall be taken to be conversant where his bed is (86). And if a leet jurisdiction be annexed to a manor within a hundred to which a leet is also appendant, the lord of the hundred has not even a concurrent jurisdiction with the lord of the manor, for the one jurisdiction is as high as the other (87).

Suit to the leet is due by reason of resiancy, and has no reference to tenure; it is therefore called suit real, and not suit service (88).

Suit real cannot be done by attorney (89), the statute of Merton, 20 Hen. 3. being confined to suit service by freeholders (90); nor, as it should seem, can suit real be released (91); but the attendance may be essoigned (92), which is generally done by the payment of a penny or some such nominal sum.

And the non-performance of suit real is to be punished by amercement, but it cannot be distrained for (93).

(85) F. N. B. 159. n. c. Ib.
160. A. Kitch. 65-6, cites 18 H

6. 13.

(86) 2 Inst. 122.

(87) Br. Lect. pl. 13, cites 21
E. 3. 3.

(88) 12 H. 7. 15. 7 E. 2. 204.
Kitch. 82, cites 45 E. 3. 23. Ib.
145. Ib. 291. 2 Inst. 99, 104, 120.

(89) Kitch. 145. F. N. B. 25
C.

(90) 2 Inst. 104. *Ante*, p. 712.

(91) *Tott v. Ingram*, 1 Brownl.
186. But see Fitz. Abr. Avow.
211, 212. Br. Incidents, pl. 28.

(92) *Mirr.* c. 1. s. 17.

(93) 2 Inst. 118. *Gillb. Dia.* 13.
F. N. B. 159 D. (n. a.) 161 D. (n. a.)

CERT-MONEY; COMMON FINE. It should seem to have been the practice for the lord of a hundred or manor, who had a sufficient influence with the crown to obtain the grant of a leet franchise, to claim from his tenants a certain annual sum *pro serto letæ*, as a mean of fixing them with a contribution towards the purchase of the franchise, which secured to them, not only an exemption from attending the sheriff's tourn, as we have already noticed, but likewise the advantages of a summary redress in all matters within the jurisdiction of the leet (94).

The money thus paid to the lord was in some places called *cert* or *certainty money*, and in others *chief* or *King's silver*; and in others again, as some suppose, *common fine*, or *head money*, or *head pence*; but it has been thought that the common fine was originally a payment to essoign the appearance of all the suitors, except the chief pledges (95).

Where the cert-money is to be paid at the day of the leet, the defaulters may be amerced, but as it is for the private advantage of the lord, he cannot distrain for cert-money or chief silver, without he can also prescribe in the distress (96). And this is the only matter of a private nature where a prescription to amerce is allowable (97).

(94) *Bullen's case*, 6 Co. 77 b.
Scroggs 2.

(95) *Ritson on courts leet*, p. 120.

(96) *Godfrey's case*, 11 Co. 44
b. 1 Roll. Abr. 211. (A. 2.) (C. 2.),
cites 15 H. 4. 9.

The proper remedy for this payment is action of debt. A court of equity will not entertain a bill for law-day silver. *Thornhagh v. Hartshorn*, Bunb. 237.

(97) Scroggs 2.

(*Mandamus to enforce a court: Forfeiture of Leet.*)

As the leet was originally granted for the more convenient administration of justice, the lord is compellable to hold a court by writ of *Mandamus* (98): and a leet is forfeitable by non-user, and by acts of abuser (99).

A long disuser of the franchise will induce the suspicion of a defect in title: — So in the *King v. Bridge* (100), on a motion for an information in nature of *quo warranto* for holding a court leet, there appeared to have been a grant from the crown in 14 Jac. 1. to R. M., his heirs and assigns, of the privilege of holding courts leet, and a court was held by the defendant in 1740, claiming under a conveyance of the manor of S. with all courts &c. in 1739, wherein courts leet were expressly mentioned, but there were no mesne conveyances between the original grant of the leet and 1702, when and previous to 1739 conveyances were made of the manor, ‘*with all courts thereunto belonging*,’ and the court of B. R. observed, that as there appeared to have been no exercise of the grant till 1740, there was strong suspicion of some defect in title, and therefore it must go to be tried by a jury.

(98) *Rex v. Willis*, Andr. 279.
Com. Dig. *Mandamus* (A). 2 Roll.
Rep. 107.

(99) Cro. Jac. 155. *Totter-*

sall's case, W. Jones 283. F. N. B.
160. A. (n. d.) 9 Co. 50. *Scroggs*
4.

(100) Sir W. Bl. 47.

The usurpation of a leet is indeed accounted so great a grievance to the people, as to have been adjudged to be an indictable offence (101).

By the opinion of some, a leet is forfeited by the neglect of appointing an able steward, or of electing such officers as are essential to the exercise of justice, as constables, aleconners, &c. or of providing particular instruments of punishment, as pillory, tumbrel, stocks, &c. (102); and clearly the franchise may be seised *quousque* for any such neglect (103).

(101) 6 Mod. 183.

(102) *Steverton v. Scrogs*, Cro. Eliz. 698. S. C. Mo. 573, 607. *Tottersall's case*, ante. *Per Popham*, Cro. Eliz. 125, in *Partridge's case*. Kitch. 24. Br. *Quo warranto*, pl. 8. And see Keilw. 138, &c. But as to stocks, see Carter 29, in *Davis v. Lowden*, where Bridgman, C.J. distinguished between stocks and pillory &c. and said that the former were originally not to punish, but only as the constable's gaol, to keep men in

hold, but that as to pillory and tumbrel the lord was bound to find them, and not the inhabitants.

It should seem that for the neglect of providing stocks, a vill is punishable by amercement in leet, and that any of the inhabitants may be distrained for the amercement. *Steverton v. Scrogs*, sup. So also as to pillory and the like instruments of punishment, if a prescription be alleged. *Ib.*

(103) Lex. Man. 25.

SECT. II.

Of the Steward of the Court Leet, (and herein of his authority to impose fines):—And of the Office of Bailiff.

WHETHER the steward of a court leet is to be considered as judge of the court, not only in the absence of the lord, but also in his presence, or whether he is to be deemed an assistant judge, assessor, or lawgiver only, when the lord happens to be present, (analogous to the shiregerieve in the Anglo-Saxon shire-gemot court), the office of steward of a leet court is obviously one of very high importance, and such as ought only to be filled by a person of considerable legal learning, and of sound judgment and discretion (104).

I have already ventured an opinion, that the steward presides in a customary court, in a representative character only, and that there is no principle of law to prevent the lord of a manor from holding his own customary court in person (105), and the same rule would seem to extend

(104) 4 Inst. 261, &c. The steward of the court leet ought to be a barrister. *Per* C. J. Holt, Scroggs 33. *Ante*, pt. 1. pa. 126.

In a recent case the court of B. R. adverted to the necessity of a steward's possessing legal know-

ledge, and considered the charges of an attorney for holding a court leet, as charges made in his professional character, and therefore taxable. *Luxmore v. Lethbridge*, 4 Barnew. & Ald. 898.

(105) *Ante*, pt. 1. pa. 134.

to a court baron, where the suitors are judges of the court. But in a court leet, which we have seen is a juridical franchise held under a grant from the crown, and not necessarily incident to a hundred or manor, the steward appears to me to be an essential officer, filling exactly the same judicial character as the sheriff in his *tourn*, and not inaptly described as a man 'indifferent between 'the lord and the law' (106).

A condition appears to have been annexed to every grant of a leet franchise, that the lord should appoint an able steward (107), and this circumstance is much in favour of the more general opinion, that the lord cannot hold his own court leet. To this may also be added, the decision in *Cholmely & Morton* (108), that the mayor, if owner of a fair, cannot be a good steward of it. And we find it laid down in various books, that the court leet is held before the steward, and that he is the judge in it (109); nor am I aware even of a single dictum, that the lord *or* steward presides as judge of that court, though the expression, as

(106) Powell on the jurisdiction of courts leet, p. 43. It is there said that the lord cannot sit as judge in his own court, in regard that the profits of the court accrue to him; but this reasoning would equally apply to the disqualification of the sheriff in his *tourn*, if the statement be correct

that he is entitled to the profits of the court. See Com. Dig. Leet (A.)

(107) *Ante*, p. 825.

(108) 2 Sho. 180.

(109) 4 Inst. 261. 6 Co. 12, in *Jentleman's* case. Com. Dig. Leet. (M. 1). And see Dy. 70 b, in *Withers v. Ischam*.

referrible to a customary court, is by no means unfrequent (110).

Previously to the discussion of the general authority of the steward of the court leet, it may be expedient to take a brief view of the relative powers and duties of the steward and bailiff, more particularly as regards the mode of impanelling the leet jury, for this, with reference to the highly important functions connected with the elective franchise of some few ancient boroughs (111), may be thought to involve a great constitutional question, and is a subject which in abler hands, and unrestrained by the limits necessarily prescribed to a work like the present, could not fail to excite very considerable interest.

I am much inclined to think, from considerations founded equally on principle and practice, that the steward of a court leet presides there wholly in a judicial character, and that every ministerial act is to be executed by the bedell or bailiff of the court (112), sworn to a due performance

(110) Co. Litt. 58 a. 4 Co. 26 b. Co. Cop. s. 45. Tr. 102.

(111) See the portreeve of *Yeo-vil's case*, 2 Roll. Rep. 82. *Peterborough case*, Heyw. B. 56. *Milbourne Port case*, Ib. 57, 63-9. *St. Mitchell case*, Ib. 378. "At Newport, in Cornwall, which has never had a charter of incorporation, the officers called vianders are annually elected

"at the lord's leet, and are jointly by the returning officers for the year." "At St. Michael a portreeve chosen by a jury of the chief inhabitants, out of the six principal tenants, who are called deputy lords of the manor, makes the return." Ib. 60. And see the borough of *Fowey case*, 1 Peckw. 512. Append.

(112) Co. Litt. 234 b.

of his duty (113). This position may not appear a mere hypothesis to those who have contemplated the organic structure of the leet jurisdiction, and are familiar with the language of our ancient statutes, and text writers, and the general system of court keeping.

We have seen that the *tourn* of the sheriff is a branch of the ancient shire-gemot court, over which the alderman (ealdorman or earl) presided, and that the shiregerieve (or sheriff), the next officer in rank in the shire, supplied his place when absent, and acted as his assessor when present; and that the decision on questions between party and party, was by the votes of the whole assembly, collected by the lawmen (114), and regulated, as to any legal points that might arise, by a reference

(113) Kitch. 91. Scroggs 99.

(114) *Ante*, p. 800. These lawmen (*lahmen*) were the first students or professors of law, some of whom, after the accustomed previous examination, were appointed assessors to the aldermen, shiregerieves, &c. and others acted as pleaders. Three appear to have been the number at first appointed to assist the alderman, &c. in judgment, but the number was afterwards increased to seven, and then to twelve. These assessors, or assistant judges, were sworn to a faithful discharge of their duties,

and not to suffer any innocent man to be condemned, nor any guilty person to be acquitted. The institution of assessors would seem to have been even earlier than the reign of Alfred the Great. Some are of opinion that the lawmen (and *ræd-boran*) of the Anglo-Saxons, were the same with the jurors of more modern times. 'But this opinion is open to very strong objections.' See 3 vol. Henry's Hist. of G. B. 346-7. *Sed vide* Turner's Hist. of the Anglo-Sax. l. 11. c. 9. p. 270. *et seq.*

to the dome-boc or law book (115). And it is, I submit, but a natural inference that the sheriff, in his tourn, acted in the same judicial character as he was wont to fill in the parent court, the shire-gemot, in the absence of the earldorman;—and equally so that on the introduction of the trial by jury (116), the judicial and ministerial characters in the sheriff's tourn were not blended, but that the office of impanelling the jury devolved on a subordinate officer of the court, corresponding with the bedell or bailiff of the court leet, and in exact accordance with the ministerial duty of the sheriff at the present day (117). That this was the practice in the tourn, and that this was originally, and as a constitutional principle, the practice also in the leet, may be thought to appear by

(115) *Ante*, p. 800.

(116) It is not disputed that this institution existed in the time of the Conqueror: indeed it is supposed by some to have been introduced into this country in his reign. The principle of the trial by jury may be traced to the Anglo-Saxon custom of allowing a party to clear himself of an accusation by compurgators, generally twelve in number, who were to swear that they believed him innocent of the charge. But these *juratores* appear to have been originally named by the party accused,

though afterwards, perhaps, by the court [Sulliv. 275], and their functions seem to accord more with the principle of our wager of law, than with that of the trial by jury.

(117) It may be right to mention, that the sheriff is in some cases constituted judge by act of parliament, as in re-disseisin by the stat. of Merton, c. 3. 'All his proceeding by force of that act is of record, and a writ of error lies on a judgement given against him.' 6 Co. 12. a. citing 44 E. 3. 10.

the few references I propose to make to our statute law, and to the combined theoretical and practical works of several very eminent lawyers.

In the Appendix to the first part of this treatise will be found an extract from an act of parliament passed in the reign of Richard the third (118), which is, I submit, conclusive evidence that the sheriff acted judicially *only* in the leet of the tourn, and that the jury were impanelled by the bailiff or other ministerial officer. The preamble of the above act is in these words: “ For-
“ asmuch as divers great inconveniencies and per-
“ juries do daily happen in divers shires of Eng-
“ land by untrue verdicts given in inquisitions
“ and inquiries before sheriffs in their tourns, by
“ persons of no substance nor behaviour, nor
“ dreading God, nor the world’s shame, by rea-
“ son whereof divers and many of the King’s
“ lieges of divers parts of England, by exciting
“ and procuring of their evil willers be wrongfully
“ *indicted*, and other that ought of right to be in-
“ dicted, by such excitation and procuring often-
“ times be spared, contrary to common right and
“ to good conscience.” And it then enacts, that no *bailiff* nor other officer should from thenceforth return or impanel any such person, in any shire of England, to be taken or put in or upon any such inquiry in any of the said tourns, but

such as were of good name and fame, and had lands and tenements of freehold, within the same shires, to the clear yearly value of 20*s.* at the least, or of copyhold, to the clear yearly value of 26*s.* 8*d.* at the least: and that if any bailiff or other officer within the said counties should thereafter return or impanel any person contrary thereunto, he should lose for every person that he so impanelled and returned, not being of the sufficiency aforesaid, as often as he so offended, 40*s.* And the sheriff other 40*s.* the one half to the King and the other half to the person suing; and that every such indictment before any sheriff in his tourn otherwise taken should be void.

By 1 Eliz. c. 17. 'for the preservation of spawn and fry of fish,' it is enacted, [s. 8, 9, & 10], that the lord of every leet should have full power and authority to enquire of all the offences contrary to the purport, tenor, and form of that statute within the precinct of their said leet: such enquiry to be had in manner and form, and after such sort as common amerciaments, or other things enquirable in their court leet, were lawfully used and accustomed to be had and made: And that upon every such presentment had in any court or leet, by the oath of twelve men or more, as aforesaid, of any offence or offences made contrary to the tenor of that statute; then all such forfeiture above in that statute limited and appointed for

such offence, should be unto the lord of the said leet for the time being, to his own use for ever, and should be levied in such manner and form, as amerciaments for affrays committed within the precinct of such leet were used and accustomed to be levied: And that if any leet after the first day of June then next should be kept, and the steward of the said leet for the time being, or other for him, did not charge the jury sworn in such leet, to enquire of all the offences done within the precinct of the said leet, contrary to the tenor and form of that statute; then the steward of the said leet to lose and forfeit forty shillings; the one moiety to the Queen, and the other moiety to the person suing for the same; and that if any jury sworn in any leet, and being charged to enquire of the offences committed within the precinct of that leet, did wilfully and willingly conceal and make default in presentment, or did not present the offence and offenders; that then it should be lawful to the *steward or bailiff* of the leet, or his or their deputy for the time being, to impanel one other jury within the said leet, and to enquire of such concealment, default, or non-presentment (119); and that upon such concealment, &c. found and presented, every of the said jurors which so

(119) Kitch. [p. 16], says "In " into the concealments of the
" some cases the steward may im- " first, and fine them," cites this
" panel a second jury, to enquire stat. & 33 H. 8. 6.

did conceal, make default or not present, should lose and forfeit for every such offence twenty shillings to the lord of the said leet, the same to be levied in manner and form aforesaid, for the other offences therein expressed.

By the year book, 7 H. 6. 12 b. if the bailiff of the court or other officer refuse to make a panel to enquire &c. upon the command of the steward, or refuse to execute his office, he may be fined. 1 Roll. Abr., 542. (Y) pl. 3. Br. Leet. 14.

Kitchin, in tracing the origin of the court leet [p. 6.], says, "It is called the view of frankpledge, for that the King there may be certified by the view of the steward, how many people are within every leet; and also to have account and view by the steward, of their good government and manners in every leet."

Again [p. 82.] "Where one hath a leet he hath but the amercements, and the day is to the King, and for that the steward represents the person of the King, cites 41 E. 3. 27." (And see S. P. Powell, p. 38, citing 41 E. 3. 31.) Again [p. 82.] Kitchin says, "If the steward of the Leet command the bailiff to impanel a jury to inquire for the King upon pain of £40, and he refuse to do it, he may put upon him the pain of £40, and at the second time £50, or more; and note, that upon all pains the lord may have an action of debt," cites 7 H. 6. 13.

Again [p. 280.] “The lord of a leet shall not prescribe to amerce the *petty jury*, for their false verdict, the same being found by the grand jury; for it is no good custom, but they may be amerced for concealing of any thing which is presentable there, and this is by custom. M. 9. H. 6. 42. Custom.”

Greenwood [on County Courts, &c.] in advertising to the institution of the court leet [p. 275.] observes, “This court is a court of record in all things that appertain to the tourn or leet, and the sheriff of the tourn, or steward of the leet, are therein judges of record. For whosoever hath the leet, hath the same authority within the precinct, as the sheriff hath within the tourn.” Again [p. 9.] “Every bailiff of franchises, deputy and clerk of every sheriff, and under-sheriff and every other person which hath authority, or takes upon him to return any inquest, jury, or tales, or to intermeddle with the execution of process in any court of record, are, as well as the under-sheriff, to take the oath mentioned in that statute for the due execution of their office, or forfeit £40. 27 Eliz. c. 12.”

Scroggs, in his instructions for holding a court leet, after noticing the usual form of proclamation, and that the suit roll should be called over, and the constables, &c. questioned as to their compliance with the orders they received at the previous courts, says, [p. 15.] “Then *choose* a jury, and name a foreman, whose oath is as follows:—You shall well and truly enquire, and true presentment make, of all such articles, matters, and things, as

shall be given you in charge; the King's counsel, your companions', and your own, you shall keep secret and undisclosed. You shall present no man for envy, hatred, or malice, nor spare any man for fear, favour, or affection, or any hope of reward; but according to the best of your knowledge, and the information you shall receive, you shall present the truth, the whole truth, and nothing but the truth, so help you God."

Kitchin in his general directions for holding a court leet [p. 12.] says, "After this [viz. calling the suit roll, and entering the essoins] *the jury shall be empanelled*, and first one shall be sworn, and after three or four together, and the oath shall be as followeth:—You shall enquire and faithfully make presentment of all things which I shall give you in charge; your companions' counsel, the King's, and your own, you shall keep, and you ought to present the truth, and nothing but the truth, so help you God" (120).

Again [p. 13.] "If any stranger be there, if there be not sufficient residents there *to be impanelled*, the steward may impanel a stranger there, for that it is to enquire for the King," &c. cites 3 H. 7. 4. Again [p. 224.] "If there be not twelve *to be sworn*, the steward may swear a stranger which comes within the view to be sworn in leet;" cites S.C. And again, [p. 89.] "If there be not twelve to be sworn, the *lord* (121) may cause strangers to be of the enquest;" cites 2 H. 7. 4.

(120) In terminating the charge to the jury (p. 40), Kitch. says, "Go together and enquire ye of the matter of your charge, and

when you are agreed, I shall be ready to take your verdict.

(121) Unless this word be meant only to express the power of the

In the Court Keeper's Companion, printed in 1717, after pointing out that the court leet is to be opened by the bailiff, by three proclamations, requiring the attendance of the suitors, and that the resiant rolls, to be delivered in by the constables or tithing-men, should then be called over, the following direction is given [p.3.]—"The resiants

court, or be a misprint, an inference might be drawn from the observation that the law permits the lord to hold his own court leet, contrary to the more general opinion, and to which I have assented in the beginning of the present section.

It is proper also to notice, that, since the last sheet was sent to press, I have discovered that C. J. Holt is stated in the case of the *Queen & Jennings*, 11 Mod. 215, to have said, "that in a *private* leet the lord may sit as judge, and exclude the steward," to which is added (but I conceive as an observation only of the reporter), "*Quare*, If so in a *publick* leet."

I still think, however, that the lord cannot preside as judge even in the court leet of a manor, situate within a hundred to which a leet jurisdiction is also appended, and there are many such instances; *vide Keene's case*, 1 Freem. 348; the *Queen v. Jennings*, *sup.* *Rex v. King*, 3 Keb. 197, 230, 251; *Louder v. Samuel et al.* Cro. Jac. 551; *Cook v. Stubb.* Ib. 583.

The sheriff's tourn is frequently

designated by the ancient law writers, the leet of the hundred, from the circumstance of the tourn having been held in each hundred; but when a leet jurisdiction is appended to a hundred, it is as much a *private* leet, as the leet of a manor; and there would seem to be no other distinction between the two franchises than this, namely, that the hundred leet has jurisdiction over such matters as the manor leet should omit to enquire of, just as the sheriff in his tourn, has jurisdiction over any matters omitted to be enquired of in the hundred court leet:—The dictum therefore of C. J. Holt, (if the authority for it is to be relied upon) must, I think, be held to extend to courts leet generally.

In addition to the reasons already given for supposing that the lord cannot hold his court leet in person, — See the language of the act, 4 Ed. 4. c. 1, and the several other statutes subsequently extracted in the Appendix, authorising stewards of leet to enquire of various offences. *Vide* also the act of 1 Eliz. c. 17, *ante*, p. 830-1.

of each tithing being called over, proceed to impanel your juries, *by calling upon the bailiff or tithing man for the return of the court leet jury*; and after proclamation made, say: You good men that are returned on the jury, to enquire for our sovereign lord the King, in this court leet,—Answer to your names,” &c.

A very useful work intituled ‘The Compleat English Copyholder,’ printed in 1735, in the instructions given to stewards of courts leet, says [p. 348.], “*The steward must call on the reeve or bailiff for a return of the jury, which must consist of twelve at least,*” and “*having made choice of a foreman, he must call over the jury, [and] fine those that do not appear,*” &c.

In Fitzherbert’s Nat. Brev. under the title ‘*Writ pro exoneratione sectæ ad curiam com’ vel baron,*’ it is said—

‘And if a man have lands within the precinct of several leets, or in one county, and he dwell within the precinct of one of them, and he be distrained to come unto another leet within the precinct of which he dwelleth not, then he shall have a writ unto the sheriff, or *bailiffs of the court*, &c. that they do not distrain him to come to that leet, within the precinct whereof he dwelleth not; and the writ is such:

‘The King to his bailiffs of the honour of C. in the county of Lincoln; or, to the *bailiff of A. of B.* in the county of, &c. greeting: Whereas by the common council, &c. that they who have lands in divers hundreds have no necessity to come to the view of frank-pledge, except in the

‘bailiwick where they shall be dwelling; we command you, that you distrain not A. to come to the view of frank-pledge in your court, or in the court of your lord of the honour aforesaid in the county aforesaid, against the form, &c. and the distress if any, &c.

‘And it appeareth that if the party be distrained, after that he hath sued the writ directed unto the sheriff, or bailiffs, that they do not distrain him, that he shall have an attachment against them: but it seems reasonable, that first he have an attachment against the sheriff, or against *the bailiffs*, who distrained him to come to the leet in the hundred where he is not dwelling, if he be dwelling within the precinct of another leet, because the statute of Marlebridge is a prohibition in itself, and he who doth contrary to the statute doth wrong unto the party, upon which he may have an attachment, without suing forth any writ.”

‘Note, That men or women who have entered into religion, ought not to come unto the sheriff’s tourn, or unto the leet of any other without great cause; and if they be distrained to come, they may have a writ out of the Chancery to discharge them, which shall be such:

‘The King to the Sheriff, &c. Whereas by the common council, &c. that men who have entered into religion have no necessity to come to the sheriff’s tourn, &c. or thus, *to the view of frank-pledge*, unless their presence be required for some special cause; we command you, that you distrain not the abbot of I. to come to your tourn;

‘ or thus, to the view of frank-pledge in your hundred of F. against the form of the provision aforesaid, and the distress, &c.

‘ And the abbot shall have such a writ unto the *bailiffs* of another lord, that they do not distrain him to come to his leet.’

The ancient form of precept from the steward to the bailiff on assembling a court leet was as follows:

‘ W. S. gent. steward of the hundred [or manor] of S. To the bailiff of the same hundred [or manor] greeting. You are hereby required to warn the leet to be kept for your hundred [or manor] [or leet and court baron to be kept for the hundred of S. and manor of A.] the first day of April, &c. by nine of the clock in the forenoon of the same day, at the usual place there [or at the now dwelling house of &c. as the case is.] Given under my hand, &c.’ (122).—Or thus:

‘ J. K. steward to the bailiff thereof health: I command likewise and appoint, that diligently you give to understand the view of frank-pledge, of the court there to be held against the Thursday, that is to say, the sixteenth day of October next coming, after the date of these presents, and have there this command: And as, &c. Dated under my seal the first day of this month of October, &c.’ (123).—Or thus:

‘ A. B. gent. steward of the manor or hundred or leet aforesaid. To the bailiff thereof, greeting: I command you, that you summon and warn **all** the tenant of the said manor, as well residents as

not residents, and all customary tenants of the manor aforesaid, that they be before me at H. aforesaid, on Thursday the 26th day of March next coming, to do then suit unto the view of frank-pledge, and all things thereunto belonging, &c. Dated, &c.' (124).

The form of precept to the bailiff for assembling the court, given in Scroggs [p. 13.], (and the same form is given in the Compleat English Copyholder, p. 346.) is as follows: *213. A.C. 54.*

" A precept to warn the tenants, and summon a jury at a court leet.

To the bailiff, &c.

Manor of S. These are to will and require you to give public notice within the said manor, that the court leet and view of frank-pledge for the same manor, (with the court baron of A. B. esquire, lord of the said manor), will be holden at the —, on Monday the — day of —, at ten of the clock in the forenoon; and that you warn all the tenants of, and resiants within the said manor, that do owe any suit or service at the said court, that they and every of them personally be and appear at the time and place aforesaid, then and there to do and perform the same. And likewise that you summon twenty and four honest and lawful men of the said manor, to be and appear at the time and place aforesaid, to enquire for our sovereign lord the King, of all such matters as to the said courts do appertain; and that you

yourself be then and there also personally present, and have you there the names of such persons as you shall have so summoned, and this precept. Given under my hand and seal, &c.”

It is, I submit, but a fair conclusion from the foregoing observations and references, that the bailiff of a leet jurisdiction is an indispensable officer, possessing functions of no trivial importance, and bearing a very close resemblance to the sheriff in his present ministerial character, as far, at least, as respects the criminal branch of his office.

The remark of C. J. Abbott in the case of *Holroyd & Breare*, already cited at some length (125), that the steward of a court baron is not a minister of that court, but a constituent and essential part of it, appears to me to sustain the analogy between the sheriff, at this day, and the bailiff of a court leet.

No mandate (observed his lordship), is directed to the steward, but he makes his mandate to the bailiff, and (added the Ch. J.), there is this material distinction between the mandate of the sheriff and that of the steward of a court baron; in the former, the sheriff commands the bailiff to make the levy, and concludes, “So that *I* may have the same before the court, &c.” but in the warrant of the steward, the bailiff is directed to levy, so that

he (the bailiff), may have the same before the court on the day appointed:

It is true that in the particular case the question arose upon the execution of the process of the court, which was a court baron, where the suitors are the judges, but if the steward of that court, possessing at most a qualified judicial character, is not responsible for a ministerial act, it is no easy task to reconcile that irresponsibility with the execution of a ministerial duty by the steward of a court leet, who presides as judge of the court, with reference more particularly to the justly admired principles of the trial by jury, ingrafted by act of parliament, or usage, on the Anglo-Saxon jurisprudence; nor does the difficulty seem to be diminished by any supposed amenability of the steward for a violation of his judicial functions.

In the case of the *King v. Harrison* (126), a motion was made in the court of B. R. for an information in nature of a *quo warranto* against the steward of a court leet (which, according to a ms. note of the late Mr. Serj. Hill, in the margin of the report of this case in my possession, was the court of Birmingham), and against the bailiff and constables, for impanelling a jury not duly summoned, the bailiff being alleged to be the proper officer to summon the jury, *who should be all freeholders*. It appeared that six persons stated to have no right were sworn, and that six freeholders who were pre-

sent, and who had not been summoned; refused to be sworn to act with them, and thereupon the steward swore six more, and the jury, so constituted by the steward, chose the bailiff of the manor and constables. A rule was obtained for the defendant to shew cause why an information should not go against him.—On shewing cause he relied on the refusal of the six freeholders to be sworn, and the constant course of chusing such officers, urging that it would be dangerous to make a precedent of trying the right of such choice by a *quo warranto*.—The court observed, that there was no room for any complaint against the constables or bailiff, but, if any, it was against the steward, and a rule was made for him to attend, and to shew cause why an attachment should not go;—the rule for the rest was in the meantime enlarged.

With the principal and more important duties of the bailiff of the court leet, I am disposed, therefore, to class that of impanelling the Jury (127), and without any distinction in the office when the lord of the leet possesses only an ordinary jurisdiction, and when a leet franchise exists in a borough or town, of which the head municipal officer is elected by the jury of the court leet (128).

(127) By possibility peculiar customs may exist in particular places on the point adverted to:—Whether such customs may be good, or how far they may be insupportable, as being at variance with the more general practice, or with established principles of law,

it is for the high legal authorities alone to decide. I infer from the *ms.* note of Mr. Serj. Hill, above referred to, that a custom of this nature was relied upon in the *King & Harrison, ante*.

(128) Sometimes the Jury merely present, in writing, the

Sometimes indeed, the bailiff of a leet, when appended to a manor or borough, is *chosen by the jury of the court*, and possesses a clear prescriptive right to exercise a discretionary power in im-

candidate who may have the most votes, but have no control over the poll. In *The King v. Rowland*, 3 Barnw. and Ald. 130, the plea to a *quo warranto* against the defendant, as Mayor of the Borough of Holt in Denbighshire, after stating an immemorial court leet, and view of frank-pledge, holden within the Borough, set out a charter of 13 H. 4, confirmed by letters patent of Queen Elizabeth; and a *by-law* that the Mayor and Burgesses, or such of them as chose to attend, should assemble at the court leet, held within one month after Michaelmas, and should elect one of the Burgesses to be Mayor for the ensuing year; and that since the *by-law* the usage had been conformable to it, and the court in part holden in the morning and in part in the evening, the one being called the morning and the other the evening court; and that the custom had been to elect the Mayor at the morning court, which Burgess was sworn into office by the steward of the Lordship, or his deputy. It then stated that on the 27th October, 1818,

a court leet was held before C. W. W. Esq. the steward, in the morning, which was duly adjourned to the evening of the same day; and that the defendant was duly elected at the morning, and sworn in at the evening court. The replication, after tendering issues on the different facts alleged in the plea, denied that the mode of election had been according to the supposed *by-law*, or that the defendant was duly sworn.

At the trial at the Shrewsbury Summer Assizes, 1819, the mode of election set out in the defendant's plea was proved, with the addition that the custom had been to swear the jury of the leet at the morning court, and then to take the poll for Mayor; and that at the evening court the jury used to make a written presentment of the person who had the majority of votes to the Steward to be sworn in. The jury had on this occasion presented to the steward the candidate opposed to the defendant, but the latter having the majority of legal votes, the steward swore him into the office of Mayor. The jury did

panelling the jury, and in the case of the *King v. Bingham* (129), Lord Ellenborough deemed that very important function a sufficient ground for an information in nature of a *quo warranto*, calling upon the defendant to shew by what authority he claimed to be bailiff of the manor and borough of Gosport in the county of Southampton. His lordship's observation was, that he did not doubt that the office as appendant to a court leet, was such for which the information would lie, and noticed particularly the argument that the bailiff was an

not appear ever to have exercised any discretion over the poll.

It was contended for the Crown that the presentment by the jury should have been stated in the plea. Holroyd, J. over-ruled the objection, but with liberty to enter a verdict for the Crown, if the Court of B. R. should be of a different opinion.

A rule nisi having been moved for accordingly, the above objection was urged on the part of the Crown, and judgment asked at all events, on the issue, "not duly sworn." But Abbott, C. J. observed, that all that was alleged in the defendant's plea, was proved, and that the presentment was merely ministerial on the part of the Jury. That it was their duty to present the person having the majority of legal votes, and they had no discretion on the subject; and that

the presentment was as an entry by a Town Clerk, and not forming a material part of the appointment, it was not necessary to allege it in the defendant's plea. Holroyd, J. added, that if the presentment were an essential part of the custom, it would put it in the power of the jury to defeat any election, and that the foundation of the mode of election was the by-law, which was wholly silent as to any presentment.

(129) 2 East 308. It appeared also in this case that the bailiff was sworn in with the other officers chosen by the jury.

But the case does not seem to decide either the general right of the bailiff of a court leet to exercise a discretionary power in selecting a jury, or the effect of a custom contravening any such possible right.

officer having a discretionary power as to the persons whom he should select for the jury; adding, that the bailiff having no fees annexed to his office, there was no other convenient civil mode of trying the right to it.

The general practice and forms of court keeping appear to me also to be favourable to the opinion, that all ministerial acts in a court leet are to be executed by the bailiff; and so far, at least, as my own experience extends, the steward of the court is totally ignorant even of the names of the jurors, until the delivery to him by the bailiff, of the list of persons summoned as jurymen, together with the resiant roll, or names of those who are liable to perform suit to the lord at the particular court.

It is indeed most difficult to suppose, that the steward of a court leet is capable of discharging any ministerial or subordinate duty, either in or out of court, as being wholly inconsistent with his judicial character, and with those organic principles of the leet jurisdiction, which, even in its present faded form, are not wholly screened from the searching eye of the antiquary (130).

(130) It certainly would not be easy to reconcile the performance of a ministerial duty by the steward of a court leet, with the notion that he is a man 'indifferent between the lord and the law.' (*Ante*, p. 825.) "It is of

the greatest consequence to the law of England, and to the subject, that the powers of the judge and jury are kept distinct," &c. *Per* Hardwicke, C.J. *Rex v. Poole*, Com. Dig. 'Enquest.' (A. 1.)

WE will now proceed to a more general consideration of the duties and powers of the steward of a court leet.

It has been said that the Steward of a leet may take a recognizance of the peace (131), and not only fine but imprison, and it is the better opinion that he may fine for a contempt of court, and commit the person guilty of the act of contempt until the fine be paid; and also that the steward may award a person to prison for a gross misdemeanor in face of the court (132): and again it said that in matters within the province of the leet, the steward hath powers equal with the Justices of the Bench (133).

In one particular instance, indeed, it should seem he has a still greater power, for if there are not sufficient suitors present to constitute a jury, he may compel a stranger passing by to be sworn (134);

(131) 4 Inst. 263-4. Powell, 32-3. Br. Leet 29.

(132) 31 H. 6. Fitz. Abr. Lete 11. *Earl of Lincoln v Fisher*, Ow. 113. 13 H. 4. 12. 10 H. 6. 7. 21 H. 7. 32. Crompt. J. P. 92 b. 130 b. These authorities are strengthened by the act of 1 Ed. 4. c. 2. (See Appendix), declaring that sheriffs in their turns or *law-days*, should not have power to fine or imprison on indictment, or presentment there, in which act there is an express exception of persons holding liberties and franchises by grant or prescription. But the steward's power to

imprison has been denied. *Godfrey's case*, 11 Co. 43 b. 1 Roll. Rep. 35, 74. Scroggs 5, 16. Kitch. 81, says, *Quare* of committing a tenant to prison since Magna Charta, c. 29.

(133) Br. Leet 14 cites 7 H. 6. 12.

(134) 7 H. 6. 12. 12 H. 7. 15. Br. Leet 14, 24. Kitch. 13. Ib. 89, cites 2 H. 7. 4. Ib. 224, cites 3 H. 7. 4. 1 Roll. Abr. 542 (Y), pl. 1, cites 7 H. 6. 13. "This power must, however, be confined to those courts in which it is the usage to swear and discharge the jury in the course of the day." Rits. 6. u.

and consequently impose a fine on him for his refusal (135).

We shall presently see that all felonies are enquirable at the court leet, those, at least, which were so at common law, and those of which the leet has express jurisdiction by statute law:—this is to be done by indictment or inquisition by roll indented under the seals of the jurors consisting of not less than twelve persons, whereof one part is to remain with the person indicting, and the other part with the steward, to be certified by him to the King's justices at the next gaol delivery (136), and persons against whom such charges by indictment or inquisition are found may be committed by the steward to prison (137); but the leet cannot arraign and deliver the persons indicted (138):—And except for felony the steward hath no power to enquire by indictment or inquisition, therefore an indictment in leet of assault and battery without bloodshed is not good, for such indictment before the sheriff in his tourn was adjudged void (139); nor can a steward in leet take indictment of robbery out of his precinct (140).

(135) Shepp. 8, 9.

(136) See further on this subject, *post*, Sect. 5.

(137) Kitch. 81, says 'The steward may send a prisoner taken for felony to the gaol,' cites 13 H. 4. 12.

(138) Crompt. J. P. 151, cites 8 H. 4. 17.

(139) Dy. 233 b. pl. 14, cites 19 E. 4. 10.

(140) Br. Corone, pl. 194, where it mentions that a *capias* was awarded against the lord of the leet and his steward for taking such an indictment, cites 41 ass. 30. 1b. Leet 18, cites S. C.

It is generally supposed that the steward of a court leet may be retained by parol (141); except in the case of the King or a corporation, when it is certain that a patent or deed is essential (142).

The better opinion is that the office of steward of a court leet, being a judicial appointment, is not grantable in reversion, even in the case of the King (143); and that such office is forfeitable for non-user or mis-user (144).

It would clearly appear that a mandamus lies to restore the steward of a leet (145), though this was formerly doubted (146). And we have seen that an information in nature of a *quo warranto* has been granted against a person for exercising the office of steward of a court leet (147).

(141) Co. Litt. 61 b. Dy. 248 a. Scroggs 88. But see Scroggs 35. It is better to retain the steward of a court leet by deed:—and certainly is essential if the appointment be for life or years; or to enable the steward to recover his salary by writ of annuity. *Ante*, pt. 1. pa. 126-7.

(142) Com. Dig. Cop. R. 5. Ib. Leet, M. 1. 19 Vin. tit. 'Steward of Courts,' F. 11 Co. 4, in *Curle's case*. *Ante*, pt. 1, pa. 126.

(143) *Curle's case*, 11 Co. 4. *Howard v. Wood*. T. Jones 126-7. S. C. 1 Freem. 473. S. C. 2 Lev. 245. S. C. 2 Sho. 21. Co. Litt. 3 b. *Ante*, pt. 1. pa. 130-1. *Ante*, p. 700. But it has been thought that a judicial office could be

granted in reversion by usage. W. Jones 311. Hardr. 257. 2 Vent. 188. And that the King may so grant without usage. *Savage's case*, cited Mar. 42. 4 Mod. 280. Co. Litt. 3 b. n. 5.

(144) 9 Co. 50 a. *Per Chock*, Br. forfeit. de terres, pl. 54.

(145) *Ile's case*, 1 Vent. 153. *The King v. the Churchwardens of Kingscleere*, 2 Lev. 18.

(146) *Rex v. Cann*, T. 10 & 11 G. 2, Andr. 14. 12 Mod. 666. And see Sir T. Raym. 12. *Stamps' case*, 1 Sid. 40. *Ante*, tit. 'Court Baron.' n. 41.

(147) *The King v. Hulston*, 1 Str. 621. *Ante*, tit. 'Court Baron.' n. 41.

DEPUTY-STEWARD.—It does not appear to have been decided whether the steward of a court leet can exercise the office by deputy, at all events, as it is doubtful whether even a general steward of a manor can act by deputy in the absence of an express power, or an established custom, I must suppose that the steward of a court leet, who presides there in a judicial character, could not depute a person to perform the duties of the office for him, unless an authority of that nature should be contained in his patent or deed of appointment, or he could shew an established custom for it (150).

(What fines may be imposed by the Steward of a Court Leet.)

The steward may set a fine on any man for a contempt or disturbance in court (151), and such fine is recoverable in an action of debt (152); but

(150) See *Scambler v. Waters*, Cro. Eliz. 687. The *Earl of Rutland & Spencer's* case, 4 Leo. 243-4. Cro. Car. 50, 279, 556. Vide also *Scroggs* 36-7. *Ante*, pt. 1. pa. 132.

An infant cannot preside either as steward or deputy-steward in a court leet. *Scambler v. Waters*, Cro. Eliz. 687. *Ante*, pt. 1. pa. 131.

(151) *Griesley's* case, 8 Co. 38 b. Dy. 233 b. pl. 14.

Action upon the case will lie by the lord of the leet, against a person disturbing his steward in holding a court leet. 38 H. 6. 16. Br. action on the case, pl. 75.

(152) Br. Leet 29. Kitch. 81-2, 86, cites 7 H. 6. 13. 10 H. 6. 7.

the fine must be reasonable (153), though it should seem that the reasonableness need not be averred (154); nor need the fine be affirmed, as in the case of an amercement (155).

In an action of debt for a fine imposed on the defendant at a court leet the plaintiff set forth in his declaration that he had a leet with in his manor of H., to which &c., and that at a court held, &c. before J. S., his steward, he the said steward told the defendant that he was a suitor, and ought to be sworn to enquire &c., who replied "in saying so thou liest," and for those words the steward set a fine of 20*s.* for which the action was brought. The case was at issue upon a plea of *nil debet*, and a verdict was given for the plaintiff. It was moved in arrest of judgment, that this was not a contempt for which a fine ought to be imposed, but the court decided otherwise, and that the action was well brought (156).

And where the defendant had put on his hat in contempt of the court, and on being admonished by the steward of the impropriety, he replied that he did not value what he (the steward) could do to him, whereupon the steward set a fine of 40*s.* for which the lord of the leet brought an action of debt, and it was adjudged that the action lay (157); But in a case where the observation only

(153) *Griesley's case*, ante, 2 East 59, in *Davidson v. Mascrop*.

(154) Co. Ent. 571-2. 2 East 59.

(155) Kitch. 82, cites 10 H. 6. 7.

(156) *Earl of Lincoln v. Fisher*, Cro. Eliz. 581. S. C. Ow. 113.

S. C. Mo. 470.

(157) *Bathurst v. Cox*, Sir T.

Raym. 68. Scroggs 150-1.

implied a doubt of the right of holding the court in the particular place, it was adjudged that the steward was not justified in setting a fine of £5, for the words spoken (158).

The refusal to make a presentment is a contempt, for which the steward may assess a fine on the jury (159); but the fine must be set severally (160), and so in all cases, except only where there is an incertainty of persons, as in a fine on a town for the escape of a felon (161): and if any sutor present in court refuse to be sworn on the jury (162), or if any of the jury depart without giving their verdict (163), or give it before all are agreed (164), they may be fined by the steward.

The steward is also authorised to set a reasonable fine on any person elected by the jury to fill the office of constable or tithing-man, who being present should refuse to be sworn (165); and on a constable or tithing-man refusing to make presentment (166).

(158) *Berrington v. Brooks*, T. Jones 229.

(159) 10 E. 3. (et E. 4.) 4. Powell 32. Kitch. 82.

(160) *Bullen v. Godfrey*, 1 Roll Rep. 73. 11 Co. 43. Dy. 211 b. pl. 81.

(161) 11 Co. 43 b, in *Godfrey's* case.

(162) 10 H. 6. 7. 39 E. 3. 44 E.

3. 15. Kitch. 82. Ib. 86, cites 13 H. 6. Leet 11.

(163) *Griesley's* case, 8 Co. 38 b.

(164) 40 Ass. 10. 1 Roll. Abr. 219. (Y) pl. 4.

(165) *Fletcher v. Ingram*, Salk. 175. S. C. 5 Mod. 127. S. C. 1 Lord Raym. 70. S. C. Skin. 635.

(166) *Griesley's* case, *sup.*, cites 10 H. 6. 7 a.

We have also seen that the bailiff's refusal to execute his office is an offence fineable by the steward of a court leet (167).

But a fine for contempt can only be set when the offence is committed in court, so where in replevin the defendant justified the taking a distress for a fine set on the plaintiff by the steward of the leet, for that he (the plaintiff) did not appear at the court to do suit and service there: upon demurrer to this plea the plaintiff had judgment, the court holding that the offence ought to have been presented, and the plaintiff amerced, when if the amercement had been unreasonable, the law had provided a remedy by the writ of *moderata misericordia*, grounded on Magna Charta, c. 14. (168); but this writ only lies where the amercement is assessed without affeerment (169).

(Of Amercements.)

An amercement is generally considered to be the

(167) *Ante*, p. 832.

(168) *Hall v. Turbett*, Cro. Eliz. 241. And see *Lukin v. Eve*, Mo. 88-9. 8 Co. 41 a. This applies equally to a constable not present at the time of his election, whose refusal is to be presented at the next court, and then he shall be amerced. *Fletcher v. Ingram*, *sup.*

In replevin the defendant avowed for distress for pain assessed in leet for not serving as constable,

nor finding sufficient deputy, according to the custom that he that is chosen must serve *per se* or another. And it was held on demurrer that the presentment was ill, being that the plaintiff should find sufficient person to serve for him, not giving him liberty to serve for himself. *Escourt v. Stokes*, 1 Keb. 416.

(169) F. N. B. 76 D; and *n. a. ib.*

act of the jury (170), and a fine the act of the court (171), though it has been said that the amercement is the act of the court, and the affeerment the act of the jury (172).

We have just seen that for not appearing at the court leet the suitor is to be amerced, as a fine can only be set by the steward for an offence in court (173), and the jury are to present that the party ought to do suit at the particular court (174). But it is not necessary to prove notice on the suitors (175).

No person can be amerced in leet for a private trespass done to the lord (176); nor could the

(170) 7 H. 6. 12, cited Br. Leet 12. Ib. 'Fine pur contempts,' 44. Ib. Amercement 65. 8 Co. 41. Palm. 7. 3 Keb. 362, in *Cutler v. Crenwick*. *Morgan's case*, 8 Mod. 300. S. C. Gilb. Eq. 209. 2 East 59.

(171) See Br. Abr. as in n. 170. Keilw. 65. pl. 5. *Godfrey's case*, 11 Co. 43 b. 2 East 59.

(172) See 8 Co. 406, in *Griesley's case*. 2 Keb. 613, in *Rex v. Dickenson*. 1 Sho. 62, in *Matthews v. Cary*. *Stephens v. Haughton*, 2 Str. 347. Vide also the case of an amercement for not appearing at the sheriff's tourn, where the assessment of it was considered to be a judicial act, *Gryffyth v. Biddle*, Cro. Car. 275. The jury are to amerce, and the sum assessed is to be affeered by officers elected by

the steward. *Evelin v. Davies*, 3 Lev. 206. *Wilton v. Hardingham*, Hob. 129. Per Dolbin, J. 1 Sho. 62, in *Matthews v. Cary*, 8 Mod. 298.

(173) *Hall v. Turbett*, Cro. Eliz. 241.

(174) Ib. If persons not being suitors of the court leet are bound by an immemorial usage to attend the lord's court, to make a jury, their attendance will be enforced by a mandamus. See the case of the *in-burgesses of Wigan*. 2 Stra. 1207.

(175) *Hall v. Turbett*, *sup.* Skin. 393, in *George v. Lawley*.

(176) 1 Roll. Abr. 211 (C) pl. 1, cites 12 H. 4. 8 b. *Rex v. Dickenson*, 1 Saund. 135. S. C. 2 Keb. 606, 613. *Rex v. Ayers*, 2 Keb. 139. 3 Keb. 644. Sir T. Raym. 160.

right be upheld even by custom (177), though this was formerly doubted (178). But a deciner may be amerced for non-payment of the *certum letæ*, if a prescription be shewn for it, but clearly not without (179).

An amercement in a court leet, as in a court baron, should be reasonable (180), and must be affeered (181); and yet it has been said, that if the jury will amerce in a *certain* amount there needs not any affeement (182).

The affeement of an amercement must be in open court by two or more persons appointed by the steward and sworn for that purpose, and not by the jurors at large (183); but the affeers may be selected from the jury; and this is the constant practice (184).

The reasonableness of an amercement once affeered cannot be questioned in a writ of error, nor shall the party have a *moderata misericordia* (185); the latter writ, indeed, is only applicable to courts that are not courts of record (186).

(177) *Wood v. Lovatt*, 6 T. R. 511.

(178) 12 H. 4. 8, cited Br. Leet 12. Ib. Custom 16; Ib. Amercement 19.

(179) *Ante*, p. 821.

(180) Co. Litt. 126. 2 Inst. 27. *Ante*, p. 720 *et seq.*

(181) *Mirr.* c. 5. s. 1. Br. Amerciament 50, cites 10 H. 6. 7. 8 Co. 39 b. *Ante*, n. 172.

(182) *Per* Holt, C. J. in *Mat-*

thews v. Cary, 1 Sho. 62; & 11 Mod. 76, in *Brook v. Hustler*.

(183) *Evelin v. Davies*, 3 Lev. 206. Lex. Man. 13. App. *Ante*, n. 172. And it must be made at the same court, and be so pleaded. *Cutler v. Creswick*, 3 Keb. 363.

(184) *Ante*, tit. 'Court Baron,' p. 722.

(185) *Stubbs v. Flower*, 1 Bulst. 125. *Crompton of Courts* 225 b.

(186) F. N. B. 75 A.

(Of the Remedies for Fines and Amercements.)

We have seen that a fine set by the steward in leet is recoverable in an action of debt (187). It may also be recovered by distress (188); even without a custom, a distress being incident to a court leet of common right (189), and the lord may sell the distress (190); but when the fine is not of common right, or when it is for the private advantage of the lord, it cannot be distrained for, without a prescription (191).

An amercement in a court leet is recoverable either by action of debt (192) or by distress; and though it is said in some of the books that a man may prescribe for amercement in leet to distrain and *sell* the distress (193), yet it should seem that the remedy by distress is of common right, equally as for a fine (194).

(187) *Ante*, p. 849. And see *Doe v. Ball*, Lex Man. 85 App. Keilw. 66 b. Kitch. 86.

(188) *Swan v. Morgan*, Lex Man. 80 App. Keilw. 66 b.

(189) 1 Roll. Abr. 666. F. pl. 2, *3. Pierson v. Ridley* (or *Ridge*), 2 Keb. 701, 739, 745. Sir T. Raym. 204. 1 Vent. 105.

(190) Br. Leet 20. *Ib.* Distress 40, 72, cites 3 H. 7. 4.

(191) *Godfrey's case*, 11 Co. 44 b.

(192) Br. Dette 189, cites 10

H. 6. 7. Keilw. 66 b. 8 Co. 41 b. Kitch. 86. And wager of law is not allowed. *Ib.* 188. Br. Ley Gager 99, cites 10 H. 6. 7.

(193) Br. Leet 34. *Ib.* Prescription 40, cites 21 H. 7. 40. "The lord may sell the distress taken for an amerciament in leet, as the King may sell the distress, for that it is the King's court, 3 H. 7. f. 4." Kitch. 85. Br. Distress 72.

(194) 1 Roll. Abr. 666 F. pl. 2.

And the distress may be taken in any place within the precinct of the leet (195); even in the common street (196). But the cattle of a stranger cannot be taken, as in a distress for non-performance of suit (197).

In justifying a distress for an amercement, the defendant must shew that the offence was committed within the jurisdiction of the leet; and for this purpose he ought to plead the bounds of the leet with certainty (198); and it is requisite also to shew in what sum the plaintiff was amerced, or rather the particular sum set by the affectors (199).

The bailiff in justifying the distress for an amercement may plead the amercement without averring the fact, but this is in trespass only; in replevin it is otherwise, for there he must recover on the merits, as he makes a title for the return of the goods (200).

It has been said that the bailiff of a court leet cannot distrain for an amercement without a special

1 Brownl. 36. Kitch. 85, cites 10 H. 7. 15, and other cases from the year books. *Griesley's case*, 8 Co. 41. *Godfrey's case*, 11 Co. 45 a. Br. Distress 45. Ib. Prescription 61, cites 9 H. 7. 22. Scroggs 145. Gilb. Dis. 12, 13. The power of distress is suspended by the possession of the King. Br. Leet 8. Kitch. 85-7. *Ante*, n. 189.

(195) Br. Leet 28, cites 2 H. 4. 24. Kitch. 86, cites 8 R. 2. Avowry 194.

(196) Kitch. 86, cites 34 E. 2. 19 E. 2. Avowry 221.

(197) *Goosey v. Pot*, Ow. 146. *The Prior of Tindal's case*. 41 E. 3. Br. Leet 4. Scroggs 146. But see Kitch. 86.

(198) *George v. Lawley*, Skin. 393. *Wilton v. Hardingham*, Hob. 129.

(199) *Evelin v. Davies*, 3 Lev. 206. *Wilton v. Hardingham*, *sup.* *Brook v. Hustler*, 1 Salk. 56.

(200) *Stephens v. Haughton*, 2

warrant from the steward, not even by command of the lord of the manor (201).

In debt for an amercement the declaration ought to express the names of the affeerors, or it shall be intended to be done by the steward (202); and it should also aver that the affeerment was made at the same court as the amercement (203).

And in *Monnop v. Thomas* (204), upon a distress for an amercement in leet, it was held that the issue whether C. and H. were *afferratores curiæ prædictæ* ought to have been tried by the record.

In an avowry for an amercement in leet it is not sufficient to say *presentatum fuit* at the leet, that the plaintiff did such an act, but he must aver the act, and not rely upon the presentment (205).

Stra. 847. *Lamb v. Mills*, Skin. 587. S. C. 4 Mod. 378. *Matthews v. Carey*, Carth. 73. S. C. 3 Salk. 52.

(201) Carth. 75, in *Matthews v. Carey*. And see *Lamb v. Mills*, *sup.* 'Not without an especial warrant from the steward or lord,' per Popham, in *Steverton v. Scrogs*, Cro. Eliz. 698. 'The bailiff may distrain for lawful amercements, by reason of the office,' per Gawdy. *Ib.*

It should seem that the bailiff of a liberty of the Duchy may distrain *ex officio* for fines and amercements for the King, and

keep the same fifteen days, and that such distress may then be sold, unless the party enter into bond or shew good cause, but that he cannot replevy. See Rits. on courts leet, 121 n.

Whether the bailiff is punishable if there be any irregularity in the distress. See Keilw. 52, pl. 3. *Ib.* 66 b.

(202) 8 Co. 40 b, in *Griesley's* case. *Cutler v. Creswick*, 3 Keb. 362-3. Keilw. 66 a.

(203) *Cutler v. Creswick*, *sup.*

(204) Cro. Eliz. 860.

(205) Sir T. Raym. 337.

And in debt for an amercement in leet the declaration must also aver inhabitancy, as well at the time of the amercement as of the effence, but this will be cured by verdict, for it must be proved at the trial (206).

Where in debt for amercement the declaration stated it to have been affeered at a court holden before the steward, but it appeared in evidence that the court was really holden before the deputy steward, the variance was held to be fatal (207). And where in debt for an amercement the declaration stated that the defendant was summoned to serve on the jury of the court *leet* and court *baron*, but the summons was to serve on the jury of the court *leet* only, the plaintiff was nonsuited, Lord Mansfield observing that this was a matter of strict law, and the plaintiff was bound to prove the averment in the declaration, which the summons did not prove (208).

It should seem that in debt for amercement in leet for not abating a nuisance, it is not necessary to allege notice of the order, for the party being within the jurisdiction of the leet is to take notice of it at his peril (209), and this rule applies equally to an amercement for breach of a by-law (210).

(206) Bull. N. P. 167, cites *Wicker & Norris*. 8 G. 2.

(207) *Wyvil v. Shepherd*, 1 H. Bl. 162.

(208) *Gery v. Whentley*, 1b. 163 n.

(209) *Lee v. Boothby*, M. 11 Car. B. R. Vin. Abr. Incroachment, pl. 2. 1b. Condition (B. d.) pl. 6.

(210) *Ante*, pt. 3. pa. 728.

The defendant may traverse the fact of the presentment in debt for amercement in leet (211): — But where an amercement had been estreated into the duchy court of Lancaster, and paid, the court of B. R. would not grant a *certiorari* to remove the record and proceedings out of a court leet, in order to enquire into the propriety of an amercement, *Rex v. Heaton* (212). The case was this— The manor and liberty of the *Savoy* is parcel of the possessions of the Duchy of Lancaster. Previous to the Easter court the *steward* issues his warrant to the *chief bailiff*, requiring him to summon all resiants, &c. to appear and do suit and service, and also to warn a sufficient number of resiants to be upon pain to serve offices, &c.; whereupon the chief bailiff issues his precept to the *deputy* to summon them accordingly. *Heaton* had been so summoned to attend the court at twelve o'clock on the 3d May, 1787; he came accordingly at the exact time, and waited a few minutes at the court house, but the steward not being there, he desired one of the officers present to take notice that he had duly attended, and that being elsewhere engaged, he was obliged to go away. Though it was the practice to issue the summonses for twelve o'clock, it had not been usual to open the court till near one o'clock, and

(211) Carth. 74. 1 Lord Raym. ther as to traverses, *post*, sect. 5.
470. Bull, N. P. 167. See further as to traverses, *post*, sect. 5.
(212) 2 T. R. 184.

this was generally known. The court was opened on this occasion at the usual time, and *Heaton* not appearing, the jury presented him, and amerced him for his default in the usual sum of £5, and the amercement was duly affeered. In Trinity term following, the amercements were estreated by the steward, and the estreat roll delivered by him upon oath into the court of the duchy chamber of Lancaster; in consequence of which the usual writ of *levari facias et capias* issued, under the duchy seal, to the bailiff of the liberty (213), into whose hands *Heaton* paid the £5.

A rule was obtained in the court of B. R. calling on the steward of the manor and liberty of the Savoy to shew cause, why a writ of *certiorari* should not issue to remove into that court the record and proceedings of the court leet, held as above mentioned, in order that the same might be quashed for irregularity: And it was urged against the rule, that *Heaton* had no claim to this indulgence, his attendance being merely illusory, and a *certiorari*, being originally a prerogative writ, was never granted of course; and that in point of law it was a decisive objection to the application, that the fine had been estreated and paid; that the records and proceedings of the leet were become part of the records of the duchy chamber, and

(213) See as to a distress by the bailiff of a liberty of the Duchy, *ante*, n. 201.

could no more be removed than the presentments and fines of any other inferior court, after they were estreated into the Exchequer (214); nor was *Heaton* without remedy, for he might have applied to the duchy court to remit or mitigate the fine [amercement] according to equity. In support of the rule it was contended, first, on the merits, that *Heaton* having attended as above stated, had thereby shewed his respect to the court, and that on a *certiorari* he would be intitled to traverse the presentment itself (215); and secondly, on form, the party being intitled to his *certiorari* if the presentment appear on the face of it to be informal (216). And that there were two objections to the presentment. 1st, That it was an amercement without affeerment, but even if in truth affeered, yet not being recorded, it must be taken that there was none, for that fact could not be tried *per pais* (217). 2dly, That the amercement ought to have been by the court and not by the jury (218). But the court, without hearing the other side on the objection to the presentment were clearly of opinion that a *certiorari* would not lie, as the *fine* [amercement] had been estreated and paid.

(214) The case of the *Sheriff of London and Middlesex*, T. Jones 169, was cited.

(215) *Rex v. Roupell*, Cowp. 458. Dy. 13 pl. 64.

(216) Cowp. 460. 1 Saund. 135.

(217) *Monnop v. Thomas*, Cro. Eliz. 860. *Ante*, p. 857.

(218) *Ante*, p. 853. Fitzg. 46, 109. 1 Barnard 214.

Amercements in the King's leet are to be estreated into the Exchequer (219) and may be levied by *levari facias*; and action of trespass for any thing done in the execution of that process must be brought in the office of pleas in the Exchequer, the bailiff levying the distress as officer of that court (220).

And the above cited case of the *King and Heaton*, shews that amercements set at courts of which the King is lord in right of his Duchy of Lancaster, are to be recovered by a similar process out of the duchy court.

- (219) *Anon.* Hardr. 471. In ordinary cases the amercements are estreated or extracted from the court roll, or record of proceedings in the leet, and a warrant from the steward to the bailiff to levy the same subjoined.
- (220) 1 Roll. Abr. 533. Lane 55-6.
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SECT. III.

Of By-Laws.

BY-LAWS may by custom be good in the court leet (221), as well as in the court baron (222); but they clearly are not binding of common right (223), except as to matters properly cognizable in the leet, as the neglect of repairing highways, bridges, &c. (224.)

And I must suppose that a custom to make by-laws at a court leet, regarding matters of a private nature, and not naturally belonging to it could not be supported (225). But in the case

(221) Lane 56. Br. Custom 32. Ib. Prescrip. 40. Fitz. Prescrip. 67. *Ruddock's case*, 6 Co. 25. a. S. C. Cro. Eliz. 648 d.

(222) *Ante*, pt. 3. pa. 726, *et seq.*

(223) *Wormleighton v. Burton*, Cro. Eliz. 448. Lane 56.

(224) 5 Co. 63 a, in the *Chamberlain of London's case*. *Vide* also Kitch. 82, 156, cites 11 H. 7. 14. 21 H. 7. 40. Ib. 89, cites 44 E. 3. 19. *Jeffrey's case*, 5 Co. 66 b. *Gateward's case*, 6 Co. 60 b. *Abbot v. Weekly*, 1 Lev. 176. And a by-law must be just and

reasonable to be supported. *Per Parker*, C. J. 10 Mod. 133.

(225) Gouldsb. 79. pl. 13. Scroggs 141. *Rex v. Arnold*, Tr. 21 Car. 2. B. R. cited ib. 142. Kitch. 89. *Per Tirrel*, in *Earl of Exeter v. Smith*, Carter 173. S. C. 2 Keb. 368. But see *contra* in the last case (*per Wild & Archer*). *Vide* also *Clarke's case*, 5 Co. 64 a. Co. Litt. 110 b. The repairs of a church would seem to be a charge of a private nature. Kitch. 89, cites 44 E. 3. 19. Co. Litt. 110 b. But see 5 Co. 63 a. *Ante*, p. 726. n. 149.

just cited from Hardress' Reports (226), it appeared that at a court leet, held for the King within the honour of Grafton, one was fined £20, according to a by-law for the payment of £5 a month by every one within the leet that should receive or place an inmate within any house there, without giving security to the overseers of the parish to discharge the parish. The fine was estreated into the Exchequer, and process issued to levy it; and Hale, C. Baron, held it to be a good by-law, and frequent in leets, but said that it was hard to estreat the fine thither without taking the usual remedy for it by distress, and to extend the party's lands upon it, when, perhaps he might have something to plead to it as that he was not within the leet, or that he received no inmate. But the party was put to plead, the officers of the court observing that it was usual to estreat such fines into the Exchequer, *when they belonged to the King.*

We have seen that the freehold tenants of a manor are bound to take notice of a by-law in a court baron (227):— When, therefore, a by-law in court leet is established by custom, I must suppose that personal notice of it would be unnecessary, as every inhabitant within the precinct of a leet is bound to attend the court.

(226) *Anon.* 471. *Sup.* n. 219.
Scroggs 11. And see *Lane* 55-6.

(227) *Ante*, p. 728.

SECT. IV.

Of the Election of Officers at the Court Leet.

CHIEF MAGISTRATES, &c.—We have seen that in some manors the jury of the court leet are invested with the highly important power of chusing the mayor, portreeve, or other chief municipal officer of the borough or town to which the leet jurisdiction is appended; but that in others the jury merely present in writing the candidate who may have the majority of votes; and have no control over the poll (228). And that in places where no charter of incorporation exists, *vianders* or other functionaries are chosen at the leet, who are the returning officers for the year (229).

(228) *Ante*, p. 842, 843, n. And see *The King v. Bankes*, 3 Burr. 1452, in which the court of B. R. discharged a rule previously granted calling on the lord of the leet for the borough manor of Corfe Castle, Dorsetshire, and on the steward, the bailiff, and deputy bailiff, and upon the jury summoned [and ready to be returned, to shew cause why a *mandamus* should not issue, requiring the lord and his steward to hold a court leet, and the bailiff, or in his absence, the deputy bailiff, to return and deliver unto the court leet, the panel or list of the jury

summoned by the bailiff, and requiring the steward to swear the jury, and the jurors to be sworn, and to proceed to the election of a mayor, (and which rule had been amended by inserting the name of the mayor *de facto*):—the ground for discharging the rule appears to have been that the election was not merely colourable, (and clearly therefore void), but *doubtful*, and fit to be tried on an information in nature of a *quo warranto*. Vide also the act 11 Geo. 1. c. 4. Append. p. 455.

(229) *Ante*, p. 826, & n.

BAILIFF.—We have also seen that in some manors the bailiff is chosen by the jury, and sworn in with the other officers elected at the court leet (230). When that custom does not prevail, he is more usually appointed by the steward, but sometimes by the lord.

CONSTABLES.—The better opinion is that both high and petit constables were recognized by the common law, the former being officers of hundreds, and the latter officers of tithings (231):—And they appear to have been chosen at the court leet, or, when no leet existed, at the tourn (232).

It has, however, been doubted whether the high constable is an officer of which the common law took notice. Lord Coke supposed that a petit constable was an officer at common law, but that the constable of a hundred was created by the statute of Winchester (233); yet that statute has on the contrary been thought to furnish evidence of the previous existence of such officers (234).

There is a singular paucity of authorities as to

(230) *Ante*, p. 843-4.

Rex v. Hewson, 12 Mod. 180.

(231) Crompt. 6 b. 2 Hawk.

Sav. 94.

P. C. c. 8. s. 6. Ib. c. 10. s. 33.

(232) 4 Inst. 267. And see

The King v. King, 3 Keb. 231,

Lamb. Constable 5. Cro. Eliz.

cites *The King v. Samois*, Hil. 16

375-6, in *Sharrock v. Hannemer*.

& 17 Jac. Lamb. 16, of Constable.

2 Lord Raym. 1195. Per Twis-

den, 1 Mod. 13. *The Queen v. Wyatt*,

(234) 2 Hawk. P. C. c. 10. s.

2 Lord Raym. 1193. 1 Salk. 175,

33. *Sed qu.* and see extract from

380. Fortesc. 127.

this stat. (13 Ed. 1. st. 2. c. 6.)

(232) 4 Inst. 265. *The King v.*

Appendix, p. 454.

Bernard, 2 Salk. 502. S. C. Comb.

416. *Rex v. Goudge*, 2 Str. 1213.

the power of the court leet to elect a constable for a vill or hamlet, where no such office previously existed, or to elect a second constable or tithing-man, where there had previously been one constable only; yet it is generally supposed that the court leet, in either the one case or the other, possesses a discretionary power: But in 1 Mod. Rep. 18 (235), it is stated, that Twisden and Moreton doubted whether *Justices of the Peace* could erect a constable-wick, where there never was any before.

It has been the subject of great controversy whether the election of constable belongs of common right to the jury of the court leet, or to the steward (236); but it clearly appears that the right of election is in the jury (237).

When a constable or tithing-man chosen at the leet is present and refuses to be sworn, the steward may set a fine upon him (238); and when absent, or if the steward refuse to administer the oath to him (239),

(235) *Vide* also 12 Mod. 181, in *Rex v. Hewson*. Yet see *Village of Charley case*, 1 Salk. 176, in which Holt, C. J. said, "a village and a constable are cor-relatives, but a hamlet has no constable." *Vide* also *James v. Green*, 6 T. R. 232.

(236) *The King v. Bernard*, *ante*.

(237) *Fletcher v. Ingram*, 1 Salk. 175. S. C. 1 Lord Raym. 70. S. C. 5 Mod. 127. *The King v. Stevens*, T. Jones 212. It should seem to be a settled principle that a corporation cannot elect a con-

stable, except by special custom *The King v. Bernard*, *sup.* S. C. Skin. 669. *The King v. Bantledge*, 2 Dougl. 536.

(238) *Ante*, p. 851. And see *Doe & Ball*, Lex. Man. App. 85. pl. 24. *The King v. Harpur*, 5 Mod. 96. The refusal to serve the office by a person not present at the time he is elected, is to be punished by amercement, *ante*, p. 852 & n.

(239) But the steward is compellable by *mandamus* to administer the oath to him. Comb. 285.

he is to go before a justice of the peace to be sworn (240); and should the leet neglect or refuse to choose a constable, the justices in sessions may appoint one, but only until the lord shall hold a court (241); and the sessions cannot discharge a constable appointed at the leet, except under the provisions of the act of 13 & 14 Car. 2. c. 12. which directs that in case any constable shall die, or go out of the parish, any two justices may make and swear a new one, until the lord of the manor shall hold a court leet; and that if any officer shall continue above a year in his office, the justices in their Quarter Sessions may discharge him, and put another in his place, until the lord of the manor shall hold a court (242).

If a person be elected constable in a court leet by spleen, although the sessions cannot interfere, yet the Court of King's Bench will discharge such person, and the constable previously appointed must act until another be duly chosen (243).

(240) *Rex v. Dr. Franchard*, 2 Str. 1149. *Rex v. Stevens*, *sup.* *Prigg's case*, Aleyn, 78. *Fletcher v. Ingram*, *ante*.

(241) *Rex v. Davis & Gosling*, 2 Stra. 1050. And see *Rex v. Stevens*, T. Jones 212. *Rex v. Goudge*, 2 Stra. 1213. *Village of Chorley case*, 1 Salk. 176. S. C. Holt, 153. *Rex v. Hewson*, 12 Mod. 180. So where there is no leet, *Lord Wentworth's case*, 1 Bulst. 174. *Terry & Furness*, 21 Car. 2. B. R., Scroggs 85.

(242) *Rex v. Davis & Gosling*, *ante*, *Limington case*, 2 Stra. 798. *Rex v. Burden & Wakeford*, Barnard. B. R. 51. *Herson's case*, 5 Vin. Abr. 429 pl. 3; 6 Vin. 587, pl. 5. See extract from the above mentioned stat. Appendix, p. 454.

(243) *The King v. Wright*, 1 Keb. 439. 12 Mod. 256.

A person elected constable who is not idoneus, may be discharged by the leet, or by the court of B. R. 8 Co. 42 a. 1 Bul. 174.

Though it is generally considered that a person is not bound to attend two leets (244), yet when a leet is held for a manor within a hundred, it has been held that a tenant of the manor leet is not excused from serving the office of constable for the hundred; but that a custom for the exemption might be good (245).

A barrister who regularly attends the courts at Westminster, and a practising attorney are exempt from serving the office of constable, but a physician whose profession is private and exer-

(244) *Ante* p. 820. And see *Cro. Jac.* 584. *Rex v. Routledge*, 2 Dougl. 537. *Scroggs* 2. *Hughes' Abr.* tit. *Avoury*, p. 170. But if a private leet has only a partial jurisdiction, the residents, as to all matters not cognizable there, must attend the superior leet, if any exist, otherwise the sheriff's tourn. 1 *Roll. Abr.* 542. *Scroggs* 3.

It may be a good custom for the chief pledges of the inferior leet, and a limited number of residents, to attend the grand leet. *Cro. Jac.* 584. *Scroggs* 3. *Shepp.* (p. 7.) says "If a man dwell within the precinct of another leet, and have lands only in my leet, I may not compel him to do service to my leet: And yet if he dwell sometimes in one place and sometimes in another,

and one of those places is within my leet, where he dwells at the time my leet is held, in this case and at this time, he must do service at my leet, for he may do suit at both places at several times." And see the next note.

(245) *Rex v. King*, 3 Keb. 197. *Keene's case*, 1 Freem. 348. *The Queen v. Jennings*, 11 Mod. 215. *The King v. Genge*, Cowp. 13.

In the above case of *Rex v. King*, Hale, C. J. said "there was this difference between a leet in ancient borough, who in Eyre appeared by four, and was always looked on as distinct from the hundred, and leet in upland towns is far different, and regularly he that owes suit to the leet owes none to the hundred, but by custom may do so." See Cowp. 13.

ciseable at his residence, has not any claim to a similar exemption (246).

TITHING-MAN (THIRDBOROUGH &c.).—The term tithing-man is more frequently used as synonymous with constable (247), though it often imports a subordinate or assistant constable; and the constable chosen for a manor sometimes has jurisdiction over distinct hamlets or vills, for which a particular constable or tithing-man is appointed (248).

We have just seen that a person elected constable or tithing-man, who refuses to be sworn, may be fined by the steward of the court leet, if the person so chosen be present, and that he may be amerced, if absent: it is also a settled principle that he may in either case be indicted at the assises or quarter sessions (249). In all indictments for such offence it is proper to set forth the manner of every such elec-

(246) *Poordage's case*, 1 Mod. 22. S. C. 1 Sid. 431. *Vide, Herson's case*, 6 Vin. 587. And see *ib.*, where a person who had been elected by the leet and discharged by the sessions, because he was a Master of Arts, was compelled by the court of B. R. to be sworn.

A certificate under 10 & 11 W. 3. c. 23, discharging persons from serving parish offices, is no exemption from being sworn constable at a court leet. *Birmingham case*

(*Rex v. Darbyshire*,) 2 Burr. 1182.

(247) So also the term 'Headborough. *Ante*, p. 805. n. 33.

(248) See *Birmingham case*, (*Rex v. Darbyshire*,) *sup.*

(249) *Id.* 1 vol. Ca. & Opin. 237. *Prigg's case*, Aleyn. 78. 12 Mod. 180. And see *Rex v. Lane*, 2 Stra. 920, which was an indictment against a person who had been elected constable at a wardmote court for the city of London, for refusing to accept the office.

tion, before whom the court leet was holden, the notice and refusal, &c.; for it has been adjudged insufficient to say, in general terms, that the party was duly elected, or that he had notice thereof, without setting forth the special circumstances (250).

ALECONNERS : LEATHER-SEALERS. — These and other similar officers are frequently chosen at courts leet, and when the assise regulations were more highly valued, and consequently more rigidly enforced, the duties of those officers were deemed of no mean importance (251); but at the present day they are but as the shadow to the substance.

HAYWARD.—Sometimes this officer is elected and sworn in at the court leet, but it is generally, if not universally, where a leet is appended to a manor, and the court leet and court baron are held together; and when it exists as a totally distinct office from that of bailiff, which is more frequently, but not always the case, it partakes more of a private than a public character, the duties of the office being principally the care of the boundary fences, impounding of estrays, and the like.

(250) *Prigg's case*, *sup.* 1
Burn's J. 496.

(251) See the pleadings in *Randall v. Whiston*, in which a prescription was alleged for a leet and

a market, and a custom for the ale-tasters chosen at the leet to cut any butter exposed to sale, which was deficient in weight. *Ex. Man. App.* 93. pl. 27.

SECT. V.

Of the Jury and their Presentments.

ALL offences cognizable in the leet, are to be enquired of, and presented, by suitors of the court (252), sworn and charged as a jury for that purpose, and consisting of not less than twelve (253); and when more than twelve are sworn, if twelve agree it is good enough (254): And it has been said, that the day being passed, the presentments in leet, where neither life nor freehold are concerned, cannot be shaken or questioned by any tribunal whatever (255); the reason for which is, that no process is there awardable against the party to compel him to answer (256): but although a presentment in leet, not affecting either life or

(252) But see *ante*, p. 846, of the power of the steward to swear strangers, if there are not twelve suitors.

(253) Scroggs 84, cites Old Book of Entries, 392. Kitch. 89, cites 6 H. 4. 1; 45 E. 3. 26. Br. Leet 7. *Cutler v. Creswick*, 3 Keb. 362.

(254) See Shepp. 20; who there says "If the custom of the place be to make two or more juries, or one grand jury and divers petit

juries, it is good to observe it."

(255) Dy. 13 b. pl. 64. 1 Hawk. P. C. 217. s. 72. Scroggs 84. Kitch. 84, citing 19 H. 8. 11. 41 E. 3. 27. 2 R. 3. 12. But he also says in the same page, that though presentments by twelve shall not be traversed, yet you shall have recovery by writ of false presentment, cites 5 E. 3. 26. 21 E. 3. Tit. Bar. 271.

(256) Scroggs 85.

freehold, is probably not traversable at the leet, yet it is settled, that all presentments in leet may be removed by *certiorari* into the Court of King's Bench, and there traversed (257). And the jurisdiction of the court, if not the presentment itself (258), was at all times traversable (259). And a man may aver against a presentment made by less than twelve (260).

We have seen that by the act of 1 Eliz. c. 17, for preserving the spawn and fry of fish, the steward of a court leet is authorised to impanel a second jury, to enquire of any concealments by the jury originally sworn, and that a penalty of 20*s.* is imposed on every juryman so wilfully concealing and making default in presentments (261). And it should seem that the perjury or wilful concealment of a jury in leet, was always enquir-

(257) *Rex v. Roupell*, Cowp. 458. 2 Hawk. P. C. c. 10. s. 13, 76. In 11 Mod. 228, it is said, that where a presentment in a leet is removed by *certiorari*, the style of the court must be set out exactly, but that there needs no such nicety in pleading.

It is too late for a removal of the presentment, after the amercement has been estreated into the Duchy court of Lancaster. *Ante*, p. 859.

(258) In the above case, in Dyer's Reports, 13 b, Fitzherbert cited Britton as an authority, that every presentment in leet and

tourn is traversable. It is to be recollected, that in an action, founded on the mere right as in replevin, or in debt for an amercement, the presentment is clearly traversable. Carth. 73-4. 1 Lord Raym. 470.

(259) Br. Presentment in court 1, cites 41 E. 3. 26. Rits. 132, 143. And see Keilw. 66-7. Scroggs 85. 2 Hawk. P. C. c. 10. s. 76.

(260) *Ante*, n. 253.

(261) *Ante*, p. 831. And see this stat. in the Appendix.

able there by another jury, and punishable by fine (262).

If presentment be not made in leet of articles of which that court has cognizance, then they are to be presented in toun (263). And if not there, then before the Justices in Eyre, and if not there, then in the King's Bench (264). So if there be any neglect of presentments in the leet of a manor, situate within a hundred, to which a court leet should be appended, the articles neglected to be enquired of in the manor leet would be enquirable in the hundred leet (265).

The jurisdiction of a leet jury like that of a grand jury, is confined to things done or neglected to be done since the last court (266); and to things happening immediately before their being sworn, or during their sitting, and a custom to swear the jurors at one court, to enquire and to return their presentments at the next court, is bad in law (267). In the case of *Moore v. Wicker*

(262) *Mirr. c. 1. s. 17.* 520-1. 17 E. 2. Br. Custom, 3. Fitz. Abr. Custom, 1. 1 Roll. Abr. 560, pl. 13, 14. *Ante*, 831, n.

(263) *Loader v. Samuel*, Cro. Jac. 551. Kitch. 84. *Ante*, n. 244. But the neglect is to be pleaded, and cannot be presumed. 2 Hawk. P. C. c. 10. s. 64.

(264) Kitch. 84, cites 41 E. 3. 27. 10 H. 4. 4.

(265) *Cook v. Stubbs*, Cro. Jac. 583. *Rex v. King*, 3 Keb. 197, 230,

251. *Ante*, p. 835, n. 121. The neglect of the lord of a manor leet is not punishable in the hundred leet, but in the Eyre. Br. Leet 13, cites 21 E. 3. 3, 4.

(266) Keilw. 66 b.

(267) *Davidson v. Moscrop*, 2 East 56. But it is said, that in some manors the jury continue in office for a whole year. Rits. 9. And see *Wicker & Norris*, cited 1 Wils. 250.

(268), Probyn J. said he did not know any law which gave the jury of a leet a power of entering into houses for examining weights and measures (they being sworn only to present) and such a custom he thought would not be good,—that the proper way was by summons, and there were sworn searchers in a court leet for examining weights and measures (269).

Every presentment in leet must be certain, and state the precise day of holding the court (270), and before whom it was held (271); and should set forth the power under which the court acts, that is, whether it exists under a grant or by prescription (272); though this does not appear to be absolutely essential (273). In *Lawson v. Hare* (274), in replevin, it was held, on demurrer, that

(268) Andr. 47, 191.

(269) In the manor of St. Giles in the Fields, Bloomsbury, there is a custom for six aleconners to be appointed by the steward, and for them or the major part of them, to search into and weigh all loaves not exceeding three penny loaves, or half-quartern loaves, and to present all bakers whose bread is found wanting in due weight, or who should hinder such aleconners in the execution of the duties of their office. See the *Duke of Bedford v. Alcock*, 1 Wils. 248, which was an action of debt for an amercement set on a baker with-

in the above manor, who refused to permit the aleconners to weigh his bread; and wherein it was held that a count, upon a *mutuatus*, might be joined with counts in debt, for an amercement in a court leet. 2 Bro. Ent. 83-4 was cited as an authority for it.

(270) *Dacon's case*, Vent. 107. S. C. 2 Saund. 290.

(271) That is *coram seneschallo*. 3 Keb. 251.

(272) *Jerrat v. Caldwell*, Cro. Jac. 184.

(273) Scroggs 8. *Rex v. Gilbert*, 1 Salk. 200. S. C. 12 Mod. 4.

(274) 2 Leo. 74.

the leet being claimed out of the hundred, it was sufficient for the defendant to allege that he was seised of the hundred, without shewing any other title, though it would have been otherwise if the hundred itself had been in question.

In the case of a nuisance it must be shewn at what place it was committed, and that such place is within the jurisdiction of the court (275); and the presentment must conclude to the common nuisance of all the King's subjects (276); for it is not sufficient to say *ad nocumentum diversorum* (277), or *ad nocumentum habitantium* (278), as the leet cannot amerce for a particular trespass or injury to the lord of the manor, or any other person, where an action will lie to recover damages, but for public nuisances only (279).

And in the case of presentments for stopping the common highways, the *locus ad quem* as well as the *locus a quo*, should be stated (280).

The proper mode of enquiring of felonies in leet is by indictment or inquisition, by roll indented under the seals of the jurors, to be afterwards

(275) Br. Leet 33, cites 5 H. 7.

2. And see Keilw. 89 a, pl. 9.

(276) *Anon.* 1 Vent. 26. *Prat v. Stearn*, Cro. Jac. 382. 2 Keb. 500. Sir T. Raym. 160.

(277) *Hughs v. Bishop of London*, 3 Keb. 106. *Rex v. Ayers*, 2 Keb. 139.

(278) Mo. 356.

(279) *Rex v. Dickenson*, 1 Saun. 135. Lex. Man. App. pl. 30. *Ante*, p. 853-4.

(280) *Ayer's case*, 3 Keb. 644. But objections on account of informalities in presentment for not repairing a common highway are not favoured. *Rex v. Inhabitants of Limehouse*, 2 Sho. 455.

certified to the King's justices at the next gaol delivery (281).

The inquisition of a leet jury in cases of felony, is in nature of a bill of indictment by the grand jury; but probably, before the introduction of the petit jury, the finding of the leet jury was conclusive (282).

According to the *Mirror* (283), all presentments in a court leet are to be sealed with the seals of the jurors, so that none may do fraud by increasing or diminishing them; yet it would seem that it is not necessary that ordinary presentments in leet should be either sealed or indented.

In the case of *Sir George Colebrook v. Elliott* (284), the offence charged in the presentment was the defendant's having in his custody, and exposing to sale, a loaf of bread not of the weight required by 3 Geo. 3. c. 11, which act did not fix the price, and on that account the court of B. R. held that the offence was not cognizable in the leet, the assise not having been broken. An objection had been taken to the presentment in this case, that it was neither sealed nor indented; but the court were agreed, that the latter objection was not maintainable.

(281) See 1 Ed. 3. st. 2. c. 17. Crompt. J. P. 151. Presentment of felony in leet, and the steward certifies it to the justices at the next sessions *by indenture*, this shall serve for indictment. Br. In-

dictm. 1, cites 27 H. 8. 2. lb. Leet 1, cites S. C.

(282) Rits. 15, 16.

(283) c. 1. s. 17.

(284) 3 Burr. 1860.

(Of Offences cognizable in the Court Leet; and the general Articles presentable there.)

In former ages most offences were punished by imprisonment, or by a mulct or pecuniary fine, which payment is supposed in many cases to have been a fixed sum proportionate to the magnitude of the crime, or the degree in society of the person injured (285); but even in the reign of William the Conqueror, many offences were punished with death or mutilation (286). Indeed the punishment of death may be traced back to the Anglo-Saxon æra (287); for it is recorded of King Alfred that he hanged thirty unjust judges in one year; who are said to have been the judges in the tourns, ealdermen of counties, or their deputies, the sheriffs (288).

The court leet never could arraign and deliver persons indicted for felony (289); nor enquire of any felonies which were not such at common law; in proportion therefore as the severity of our criminal code increased, the number of offences punishable in the court leet of necessity diminished.

The offences which the leet is to enquire of and afterwards to certify to the King's justices, at the next assises or gaol delivery of the county (290),

(285) See Sulliv. F. L. 275.

(286) Reeve's Hist. Engl. L. 1 vol. 16, 33, 193.

(287) Treason, murder, rape, and robbery, were punished as capital offences, but mutilation was afterwards substituted as the punishment for rape; which by 3 Edw. 1. was punished as a trespass only,

but was again made felony by 13 Ed.

1. and benefit of clergy was taken away by 18 Eliz. Sulliv. 275. Bract 3. c. 28; *post*, articles enquirable in leet, (tit. Rape.)

(288) Sulliv. 275.

(289) Br. Franchies 5, cites 8 H. 4. 18. lb. Leet 11, cites S. C.

(290) *Ante*, p. 876-7.

are treason (but which is enquirable *as felony only*), murder, rape (291), manslaughter, arson, burglary, sacrilege, grand and petit larceny, rescue, accessories, voluntary escape, and every offence which was deemed felony at common law; and also negligent escape (292).

There are, however, various offences which are not only enquirable in the court leet, but also punishable there by fine, amercement, &c., such as nuisances, disturbances, breach of assise, forestalling, the refusal to accept or neglect to execute certain public offices, the non-observance of certain acts enjoined, and the commission of others prohibited by particular statutes, &c.; and I propose to exhibit in alphabetical order the various matters which are to be enquired of in the court leet, referring to some authorities under each title, and avoiding any animadversion on the antiquated nature of several of the articles; conceiving that this arrangement may best assist the steward, who, under very particular circumstances, may think it desirable in his charge to the jury, to detail the various offences and other matters which are properly cognizable in the court leet.

(291) But see *post* 'articles enquirable in leet', and *quære* whether murder and rape are not to be enquired of (if at all), the former as bloodshed, and the latter as trespass only. *Ante*, n. 287.

(292) In cases of felony, the jury are also to enquire what lands and tenements, and also what goods

and chattels, the felon had at the time the felony was committed; the former escheat to the lord, subject to the King's year and day waste (*ante*, p. 742); and the latter are forfeited to the King, and sometimes to the lord of the leet, by grant or prescription, *ante*, p. 750, n. 255; 752, n. 263; 773.

(Articles Enquirable in the Court Leet.)

Accessaries.—Kitch 41 (receivers of felons).—

Jenk. P. C. 12 (accessary before and accessary after the fact).—Shepp. 41 (accessaries before or after the offence) And see Pow. 76.

Adultery.—3 Inst. 206 ('in ancient times adultery and fornication were punished by fine and imprisonment, and enquirable in tourns and leets by the name of Letherwite'). And see 2 Inst. 488.—Jenk. P. C. 10 (adultery is to be enquired of as felony). [But indictment lies at common law for adultery. Salk. 552.]

Affray.—See *Assault and Battery*. [Prescription in leet for every affray or bloodshed, to pay so much; and to distrain for it, and sell the distress is good; for it is the King's court. Br. Prescrip. 106, cites 11 H. 7. 13, 14.]

Aleconners.—See *Officers*.

Alehouse-keeper.—Jenk. P. C. 16, 17 (selling beer or ale without license:—alehouse-keeper licensed or unlicensed, selling beer or ale in unsealed measures, or less than full measure: encouraging tiplers, or suspicious persons: not furnishing accommodation to strangers).—Kitch 45 (bread and beer is enquirable in the leet, and not

in the tourn of the sheriff, but seek 18 H. 6. 13).—

Jenk. P. C. 17 (if any alehouse-keeper shall suffer any persons to sit tipling in his house above the space of an hour, he forfeits 10s. and the tiplers ten groats a piece).—Ib. (if any alehouse-keeper suffer any one to be drunk in his house, the drunkard forfeits 5s., the alehouse-keeper 10s.). And see Greenw. 293.—Shepp. 54 (if a tipler sell not by measures allowed and sealed, he may be punished by the common law or upon the statute). And see Kitch. 21.

Allegiance.—Jenk. P. C. 20 (if all deciners be present).—Mirr. c. 1. s. 17; Britt. c. 29; Flet. 2. c. 52. s. 6. 17 (whether all above twelve years of age have been put in dozein [dizein], and sworn fealty to the King; and of the receivers of others). And see Pow. 19, 23, 80; Shepp. 42.

Approvers.—Flet. 2. c. 53; Britt. c. 29 (those who shall have retained approvers). [For the signification of the term 'Approver', *vide* 3 Inst. 129. c. 56].

Arson.—Jenk. P. C. 11 (burning of a house or barn adjoining to a house).—Kitch. 48 (if one feloniously in the night burn a barn adjoining to a house, 11 H. 7. 1).—Shepp. 40 (burning of houses or barns of corn, out-houses adjoining to dwelling-houses in the night).—Greenw. 288 (if

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any one feloniously burn any dwelling-house, or barns, or stacks, or mows of corn in the night season, it is felony at the common law).—Powell 74 (feloniously burning any dwelling-house, or any barn adjoining, or any stacks or mows of corn near any barn or dwelling-house in the night). And see Stat. Wallie.

Artificers. — Jenk. P. C. 19 (if any one shall use any art, mystery, or manual occupation, having not been brought up apprentice thereunto by the space of seven years).

Assault & Battery.—The Stat. for View of Frankpledge (283) 18 Edw. 2. 1325 (of bloodshed, and of frays made).—Kitch. 44, 73 (assault upon a person only is not enquirable and punishable by presentment in leet, but bloodshed is, cites 8 E. 4. 5. 4 H. 6 9. 11 H. 6. 29. 22 E. 4. 22). And see Stat. Wall. Pow. 89.—Kitch. 73 (if any affray were so that the King's people were disturbed, for that is more than particular, 1 R. 3. 1).—Jenk. P. C. 21 (common disturbances of the peace, this is to be presented).—Scroggs 7 (it seems reasonable that private or particular assaults and batteries, though there be no

(283) Vide Ritson on Courts as it seems to be nothing more than a sheriff or steward's charge in the toun or leet." Leet, p. 56 (n. d.) who says, "this has been denied to be a statute; and with some reason,

bloodshed, should be enquirable in leet: Bacon J. and Walter thought they might, Rolle *contra*, Pas. 24 Car. 1. B. R). (294).

Assise—Stat. 18 Edw. 2; Stat. Wall. (of the assise of bread and ale broken).—Britt. c. 29; Flet. 2. c. 52. s. 21, 27; Kitch. 21, 42-5; Jenk. P. C. 24; Shepp. 52; Powell 109; Scroggs 10; Mirr. c. 1. s. 17 (breach of assise). *Vide* also Co. Litt. s. 234.—**3 Burr.** 1862, 1863-4 ('the setting the assise, which must fix both price and weight, is the basis of the leet jurisdiction, and it cannot take cognizance of an offence created by act of parliament, regulating the weight, &c. as in the 3 Geo. 3. c. 11'). See 51 Hen. 3. st. 1, 8 Anne c. 18, repealing the last act. Stat. 81 Geo. 2. c. 29, repealing the laws respecting the assise of bread, but confirming the principle of fixing both price and weight, and saving the right or custom of lords of leet franchises, to enquire of and punish the breach of assise of bread. *Vide* also *ante*, p. 877.

Barretors.—See *Scolds*.

Bows & Arrows—[By 38 H. 8. c. 9, for the en-

(294) A steward may fine for an assault in leet (*sedente curia*) in disturbance and contempt of the court, but an indictment there of assault and battery without

bloodshed is not good, for such indictment before the sheriff in his tourn was adjudged void. Dy. 253. b. ca. 14, cites H. 13. E. 4. 10. *Ante*, p. 845, 847, 849.

couragement of archery, and debarring unlawful games, every male subject was compellable to have a bow and arrows; and stewards of leets and law-days were authorised to enquire of the offences mentioned in the act. See Kitch. 27-8. *Vide* also Append. p. 439.] And see Cross Bows, *post*.

Brothels; (Disorderly Houses)—Kitch. 20 (keeping houses of ill-fame is a cause to break the peace, and a vice which corrupteth the state). And see Jenk. P. C. 22. Scroggs 20.—Ib. (you are to enquire of all unlicensed ale-houses, and present the offenders; and if any inns or alehouses have a license, yet you are to enquire if they keep good order in their houses, otherwise you are to present and punish the offenders).

Burglary.—Stat. 18 Edw. 2 (of breakers of houses, and of their receivers). And see Britt. c. 29. Flet. 2. c. 52. Kitch. 17. Jenk. P. C. 11. Shepp. 40. Pow. 75.

Chief Pledges.—Stat. 18 Edw. 2 (and if all the chief pledges be come, as they ought to come, and which not).—Kitch. 19 (if the capital pledges appear).—Pow. 80 (if the capital or chief pledges of every decennary appear: these pledges correspond with the tithing-men of the present day).—Britt. c. 29; Flet. 2. c. 52. s. 5;

Mirr. c. 1. s. 17 (if all the chief pledges be come to the view, and if they have their dozeins [*dis-eins, ante*, p. 806] entire).

Church.—Jenk. P. C. 19 (if any person of the age of sixteen years or more, shall wilfully absent himself from church or chapel, he shall forfeit for every month £20, one third to the Lord Protector [the crown] another third to the poor of the parish, and the other third to the informer).

Clippers, &c. of Money.—Stat. 18 Edw. 2 (of clippers and forgers of money).—Kitch. 43 (clipping of gold and silver is enquirable, cites 22 Edw. 4. 22).—Ib. 16. And see Jenk. P. C. 8.

Clothes: Clothiers.—Stat. 18 Edw. 2. (of cloth-sellers and curriers of leather dwelling out of merchant towns).—Mirr. c. 1. s. 17 (of sellers of old clothes, dwelling out of great towns). [*Vide* 4. Edw. 4. c. 1. *post*. Append. p. 435].

Coin.—See *Treason*.

Common.—[*Vide*, act 32 H. 8. c. 13 (*post*, Append. p. 437)]. Kitch. 23, 32. [N. B. Inclosures of, and encroachments on, commons, are not public injuries, and therefore cannot be enquired of in leet. Scroggs 86. Cro. Eliz. 448. Lex. Man. 141.]

Conspiracies.—Kitch. 27 (if any butcher, baker, &c. conspire not to sell but at certain prices, cites 2 E. 6. c. 15).—Ib.; Jenk. P. C. 28 (if workmen or labourers conspire not to work but at certain prices, or not to do but certain labour, &c. the latter cites 24 H. 8. c. 12).—MIRR. c. 1. s. 17 (all manner of conspiracies). And see the above stat. of 2 & 3 Ed. 6. c. 15 (*post.* Append. p. 440).

Constable.—See *Officers.*

Cottages.—[By stat. 31 Eliz. c. 7 (said to have been passed to prevent the lords of great wastes from converting the whole into building purposes, *ante* pt. 1. pa. 106.), a penalty of £10 is inflicted for erecting or converting a building into a cottage, without laying four acres of land to it of the party's own freehold; and 40s. a month for continuing such cottage; and justices of the peace and lords of leet are authorised to enquire of and hear and determine all offences against the act, as well by indictment as otherwise by presentment or information, and to award execution for the forfeitures by *fieri facias*, *elegit*, *capias*, or otherwise, as the cause should require. And see s. 6. of the same act, against receiving inmates into such cottages. *Post*, App. p. 443-4 (*n.* 213). Jenk. P. C. 32-3. Pow. 152.]

Crossbows & Handguns.—[See the prohibitory acts 33 Hen. 8. c. 6. and c. 9. *post*, Append. p. 428-9. Kitch. 28-9, 42.]

Crow-nets.—[See 24 H. 8. c. 10. Kitch. 80, 48.]—
—Jenk. P. C. 29 (towns to be amerced for not providing nets for destroying crows and rooks).
—Com. Dig. 'Lest,' 167 (L. 14) (occupiers of land to be amerced at the discretion of the steward, and he ought to give this act in charge.—
[*Note*, this part of the act was repealed by the stat. 8 Eliz. c. 15, and the repeal continued by several other acts which are all expired, whereby this clause seems now in force].)

Curriers.—[See Stat. 1 Jac. 1. c. 22. repealed by 48 Geo. 3. c. 60. *post*. Append. p. 442. *Mirr.* c. 1. s. 17. Jenk. P. C. 28. Kitch. 29.]

Deciners.—See *Suitors*.

Deer.—Jenk. P. C. 12; Kitch. 18, 100; Pow. 73 (taking of tame deer and swans marked is also felony).—Jenk. P. C. 29; Kitch. 31; Pow. 150 (hunters and stealers of deer are here to be enquired of and presented).

Disturbers.—See *Noctivagancy*.

Doves: (Dovecotes).—Stat. 18 Edw. 2 (of such as take doves in winter by door-falls or en-

gines). *Vide* also Stat. Wall. Shepp. 60.—Kitch. 17 (taking doves in the dove-house in the night is felony and enquirable in leet, but not where they are taken in their roost out of the dove house, cites Stamf. 25 C. 22 Ass. 29. 18 H. 8. 2). And see Pow. 64.—Jenk. P. C. 11 (taking of doves out of a dove-house in the night time is felony).—Britt. c. 29 (of the takers of another's doves) (295).

Dozeins: (Dixeins)—Stat. 18 Ed. 2 ('and if all the dozeins be in the assise of our Lord the King, and which not, and who received them').

Drunkenness.—See *Tiplers*.

Escape.—Stat. 18 Edw. 2 (of persons imprisoned,

(295). It was held in *Bowlston v. Hardy*, Cro. Eliz. 548 (S. C. 5 Co. 104 b. Mo. 420, 453) that dove-cotes could be erected by the lord of a manor only, and that if a private person erected a dove-cote he was punishable in leet for a nuisance, but that an action on the case did not lie. And see *Bond's case*, Mo. 238, which supposes the right to exist not only in the lord of a manor, but in the parson of a parish. It is difficult, however, to imagine that a right could exist prescriptively in any individual, which, if exercised by

another, would be deemed a public nuisance. Indeed the above authorities appear to have been over-ruled, or, more properly speaking, denied. See *Dewell v. Sanders*, Cro. Jac. 490, in which the court also held, that so far as the erecting of a dove-house (or rather the storing of it with pigeons) might be a nuisance, it extended itself beyond the boundary of any leet jurisdiction existing in the particular place, and therefore was not enquirable in the court leet, but by the justices of assise. *Vide* also 1 Roll. Rep. 201

and after let go without mainprize).—*Ib.* (of escapes of thieves or felons).—Kitch. 18, citing *Stamf.* 32 I. 33 B. (*voluntary*, i. e. if a person after taking another for felony allows him to escape, this is felony: *negligent*, i. e. if a person is arrested for felony, and afterwards escape through the negligence, though against the will, of his keeper, and if he be not freshly pursued and taken before the keeper lose sight of him, that is fineable, and enquirable in leet). *Vide* also *Jenk. P.C.* 12. *Pow.* 77. *Greenw.* 288.—*Hale, H.P.C.* 603 ('an escape is presentable in a leet, but they cannot set a common fine or amercement there, but it ought to be sent to the next *Eyre*, &c. or may be removed into the King's Bench by *certiorari*, and there the common fine or amercement set, and this by the statute of *Westm.* 1. cap. 3).

Escheat.—See *Forfeiture*.

Estray.—Kitch. 22 ('if any estrays be, it is enquirable'). And see *Shepp.* 12, 43. *Ante*, p. 766.

Eve-droppers.—*Jenk.* 22; *Kitch.* 20 (such as stand under walls, windows, at doors or other places to carry tales to others, thereby to cause debate or strife amongst their neighbours).—*Vide* also *Scroggs.* 20. *Shepp.* 48. *Pow.* 91.

False Measures.—See *Measures*, *post*.

Felonies.—Kitch. 15 (of all felonies at the common law, but not of the death of a man, cites 22 E. 4. 29). Br. Leete 26, cites S. C. And see ib. 2. 2 Inst. 181. Shepp. 10, 39. Pow. 53. —2 Hale, H. P. C. 71 (leets have power to receive indictments of felonies at common law, but not of felonies by act of parliament, unless specially limited to them). See *Treason*, *post*.

Fish.—Kitch. 27; Pow. 73 (the taking of fish feloniously out of ponds, stews, or trunks, in the night; but when taken in the river it is not felony). Jenk. P. C. 29 (if any person shall either by day or by night break down the head or dam of any pond, pool, or moat, wherein the lord hath fish, with an intent to steal or destroy the said fish, he shall pay to the lord treble damages, and be imprisoned three months, and be bound to good behaviour for seven years). —*Vide* also, 1 Ediz. c. 17. for preserving the spawn and fry of fish, *post*, Append. p. 444. Shepp. 59, 60. Pow. 146.

Forestalling, Regrating, and Engrossing.—[See the 12 Geo. 8. c. 71. repealing all the stats. concerning these offences.]—Jenk. P. C. 18 (forestallers, regrators, and ingrossers, are here also to be presented or informed against.)—Shepp. 52, 53 (these are offences against the

common law, and so to be enquired of still :—
and the offender to be amerced). And see Kitch.
45. Pow. 104-5. Greenw. 293. 4 Bl. Com. 157-8.

Forfeiture.—Shepp. 43-4 (' the escheats of all felonies did pertain to lords, and therefore are enquirable here : you are to enquire, therefore, of all kinds of forfeitures to the state').
Ante, p. 740, *et seq.* 750 n.

Franchises.—See *Treasure Trove, Waife, Wreck*, *post*.

Fugitives.—Stat. 16 Edw. 2 (' and if there be any of the King's villains fugitive dwelling otherwise than in the King's demesnes, and of such as be within the King's demesnes, and have not abiden a year and a day').—*Ib.* (' and if there be any of the lord's villains in franck-pledge, otherwise than in this court'), [but it should seem that this latter section was not in the original]. *Vide* also Kitch. 19.—Jenk. P. C. 14, 15 (the jury is to enquire of these offences and present them).

Gaming Houses (and Playing at Unlawful Games).
[See 38 Hen. 8. c. 9. Kitch. 32. Lex. Man. 146. Scroggs 20].

Hamsoken; (*Homesoken*), or the invasion of a house.—[Britt. c. 29. Stat. Wall.]

Hares.—[*Vide* the stat. 14 & 15 H. 8. c. 10. *post*.

Append. p. 436, against tracing and destroying Hares in the snow. And see Kitch. 39. 43. Jenk. P. C. 32. Pow. 149.]

Highways.—[See 2 & 3 P. & M. c. 8, 18 Eliz. c. 10, *post*, App. 440-1].—Lex. Man. 146 (such who do not their day's work in mending the highways contrary to the statute 2 & 3 P. & M. c. 8). [The liability to repair, and the want of reparation should appear in the presentment, *Rex v. Johnson*, 1 Keb. 527; *et vid. Broughton v. Bennet*, 2 Keb. 514, in which the court of B. R. held that lessee for years was not bound to repair *ratione tenuræ*. Neglect of scouring a ditch in a publick highway is punishable in leet, although the act of 18 Eliz. c. 10. gives the forfeitures for highways to the surveyors, *Stephens v. Hayns*, Sir T. Raym. 250.]

Horsebread.—See *Innholders*.

Hostlers.—See *Innholders*.

Hue and Cry.—Stat. 18 Edw. 2 (of cries levied and not pursued).—Scroggs 10 (all who shall levy a hue and cry without cause, or neglect to levy one where they ought, or to pursue one rightly levied). And see Stat. Wall. Kitch. 33, 99. Jenk. P. C. 30. Powell, 158.

Innholders.—[See the stat. 21 Jac. 1. c. 21, *post*, App. 442. Pow. 113.]

Larceny.—Stat. 18 Edw. 2. (‘ of petty larcens, as of geese, hens, or sheafs).—Ib. (of thieves that steal clothes, or of thieves that do pilfer clothes through windows and walls).—Ib. (of such as go in message for thieves).—Jenk. P. C. 13 (petit larceny is also here to be enquired of).—Ib. 23 (also if any go in message for thieves, knowing them to be thieves). *Vide* also Kitch. 18, 20. Pow. 64.

Letherwite.—See *Adultery*.

Maiming, (Mutilation).—[Jenk. P. C. 10.]

Malt.—[See stat. 2 & 3. Edw. 6. c. 10, *post*, Append. p. 439].

Manslaughter.—Jenk. P. C. 9. (is here to be enquired of as bloodshed).—Kitch. 16 (manslaughter is here enquirable).—And see Pow. 55.

Measures: (False Measures & Weights).—Stat. 18 Edw. 2 (of false measures, as bushels, gallons, yards, and ells).—Ib. (of false balances and weights).—Ib. (of such as have double measure, and buy by the great and sell by the less).—And see Kitch. 21 (cites 8 H. 6. 5. Mag. Ch. c. 25. 51 H. 3, 5. 27 E. 3, 10).—Ib. 45 (cites Britt. f. 32, 71).—Jenk. P. C. 23-4. Shepp. 16, 52. Pow. 119. Scroggs 10. Greenw.

295. [N. B. The punishment of knavish bakers was anciently to stand in the pillory, and of knavish brewers to stand in the tumbrel, or dung cart. *Vide Stat. Judicium Pilloris.* 51 H. 3. stat. 6. 3 Inst. 219. 4 Bl. Com. 157].

Miller.—Kitch 29 ('if any miller within the lordship change the corn which he hath to grind, it is enquirable').—See also Jenk. P. C. 23.—And see *post*, Toll.

Murder.—Kitch 43 (you may enquire in leet of all felonies at common law, but not of the death of a man, cites 22 E. 4. 22.)—Yet see Kitch. 16. Stat. Wall. Britt. c. 29. Flet. 2. c. 52.—Br. Leet 18 (a steward in leet cannot take indictment of the death of a man, and if he do the lord shall be punished for contempt, cites 41 ass. 30). And see Fitz. *tourne de Vis.* 5. Ib. *Lete et Hundr.* 10. Shepp. 17.—But see Jenk. P. C. 9 (murder to be enquired of in leet, as bloodshed). And see Powell 53-4.

Masters.—[See the act 4 & 5, P. & M. c. 3, *post* Append. p. 441. Kitch. 36, 43. Pow. 153.]

Noctivagancy.—Stat. 18 Edw. 2 (of such as sleep by day and watch by night, and eat and drink well, and have nothing).—Ib. (of such as continually haunt taverns, and no man knoweth whereon they do live). And see Jenk. P. C.

22.—Kitch. 20 ('also, if there be any vagabonds or wanderers, and those which walk by night, and sleep by day, and if there be any which are common haunters of taverns, or alehouses, and go about having nothing to live of')—Ib. 44-5 (night walkers are enquirable in leet, cites 4 H. 7, 1).—Shepp. 48 (he that sleepeth by day and walketh by night).—*Vide* also Rastal, 'Leete' 2. Poph. 208. Pow. 93-6.

Nuisances.—Stat. 18. Edw. 2. (of walls, houses, dykes, and hedges setup or beaten down to annoyance).—Ib. (of bounds withdrawn and taken away).—Ib. (of ways and paths opened or stopped).—Ib. (of waters turned or stopped, or brought from their right course). And see Stat. Wall.—Kitch. 41, 44 (of ways and paths taken away or stopped; of waters wrong turned or stopped, or taken away, of corrupters of water by lime, flax, &c.) And see Jenk. P. C. 21. Shepp. 45.—Kitch. 44 (stopping the highway is there enquirable, 27 H. 8. 32, for that is a common annoyance to all the King's subjects).—Ib. (common nuisances, as ditches and hedges made to the disturbance of the people, cites 9 H. 6. 44. 10 H. 6, 7). And see Br. Leete 2, 26. Flet. 2. c. 52. Britt. c. 29. Co. Litt. 56.—Kitch 44 (purprestures in highways are enquirable there; and presentment may be in leet for not cleansing a ditch adjoining the highway, cites 1 R. 3. 1. 3 H. 7.

1. 47 E. 3. 12. And see Jenk. P. C. 20. Shepp. 12, 13. Flet. 2. c. 52.—Jenk. P. C. 21 (if any walls, houses, pales, or hedges be made or erected within the jurisdiction of this court, to the annoyance of the people).—Br. Leete 30 (presentment in leet of the inclosure of a common is void, for it is a wrong, but not a common nuisance, for that must be to the injury of a great number of people, as the destruction of a highway or the neglect to repair a bridge, cites 27 Ass. 6). And see Shepp. 44. Pow. 81-2. 1 Anders. Rep. 234. ca. 251, where the presentment was held void, being for *diverting* the highway, and not for stopping or obstructing it.

Officers, viz.—Aleconners; Constables; Tithingmen, &c.—Jenk. P. C. 20, 25 (their neglect is to be enquired of and presented in leet). And see Pow. 18, 157. Shepp. 49.

Outlaws.—Stat. 18 Ed. 2; Stat. Wall. (of persons outlawed returned, not having the King's warrant). Britt. c. 29; Flet. 1. 2. c. 52 (of outlaws, and those who have abjured the realm returned, and of their goods and receivers). And see Mirr. c. 1. s. 17. Jenk. P. C. 27.—Kitch. 23 ("if any person be outlawed in debt, trespass, or other personal action, his goods are forfeited, and the King shall have them, unless they be

granted unto the lord by charter: this is also here enquirable"). And see Shepp. 12. Pow. 160, &c.

Peacocks.—See *Swans*.

Pheasants & Partridges.—See the act 23 Eliz. c. 10, for their preservation, *post*, Append. 441. Kitch. 31. Jenk. P. C. 33. Pow. 148.

Pigeons.—Kitch. 17 (taking of young pigeons, or young goshawks [goss hawks] in their nests in the night is felony, and enquirable in leet, cites 14 H. 8. 18 E. 4. 8). And see Jenk. P. C. 11. Pow. 64. Greenw. 257.

Pillory, Tumbrel, &c.—Jenk. 28 ('the jury are to enquire whether there be within the leet a pillory, and tumbrel, and stocks, to punish offenders according to law: in every town where there is a leet, there ought to be stocks; and in default thereof, the town shall forfeit £5'). And see Kitch. 24. Pow. 156. Shepp. 16. [*Vide* also, *ante*, p. 823; and *quære* if it is not the duty of the lord to provide a pillory, tumbrel and the like instruments of punishment; and note the distinction there as to stocks.—And see *False Measures and Weights, ante*].

Pound-breach.—Kitch. 20 (if any break the com-
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mon pound, or take distress from thence, present their names).—*Ib.* 41 (of breaking the common pound).—*Jenk. P. C.* 21 (enquiry is also to be made of all pound breakers, such as break the common pound, *to take any distress out of the same*, their names are to be presented). And see *Stat. Wall. Pow.* 89. — *Scroggs* 21 (you are to enquire of all pound breach and rescous: if any cattle be put in the lord's pound, and taken out by force, otherwise than by due course of law, this is called pound breach, and by you enquirable, &c.) [*But Note*—According to *Sanderson's* case, 4 *Leo.* 12, pound breach is not enquirable in leet, not being a common nuisance. *Sed quære*, Whether it is not in the nature of rescue, and enquirable and punishable in leet accordingly.]—*Shepp.* 16 (lack of stocks, pillory and tumbrel, ducking stool, *common pound*, cites old book of entries 390, 495. *Pow.* 156). *Greenw.* 292.

Purprestures.—*Stat.* 18 *Edw.* 2 (of purprestures made in lands and waters to annoyance). And see *Nuisances*.

Rape.—*Stat.* 18 *Edw.* 2 (of women ravished not presented before the coroners).—*Kitch.* 41, in his breviat of charge, says (of ravishing a woman, which is not presented before the coroner).—See also *Kitch.* 16, 17 (citing *Stamf.* 23. b. *Rastal*

Rape 2). Pow. 48.—Kitch 17 (rape as felony, which is felony made by the statute, is not enquirable in leet, nor any thing given by statute, unless it be enquirable by express words, but that which is made petit treason by statute, is enquirable as felony by the common law, cites 11 H. 7. 22).—2 Inst. 181 (if rape had not been made felony by the stat. of W. 2, but had been felony when that act was made, then should the court of the leet have enquired of it, as of a felony by the common law; but seeing it was made felony by that statute, it hath been often adjudged that the leet cannot enquire thereof: for albeit it was once felony, yet the nature of the offence being changed, as is above said to be no felony, when another act made it felony again, yet could not the leet enquire thereof, as of a felony). And see Br. Abr. Leet pl. 22, (cites 6 H. 7. 4; Fitz. Lete et Hundr. pl. 10, citing 7 H. 6. 12). *Vide* also Kitch. 16, 43.—Pow. 53, 59 (rape as felony is not enquirable, but as trespass). *Vid.* also Greenw. 286.—But see Jenk. P. C. 9 (rape is also here to be enquired of). [Rits. on Courts Leet, p. 18, 19, urges on the authorities of Britt Kitch. &c. that rape is enquirable in leet, as a felony at common law; and observes, that those who would allow it to be enquired of as trespass, should recollect, that where a trespass is by statute turned into felony, the trespass is merged; for which he cites Bull, N. P. 32.]

[*N. B.* By statute W. 1 (3 E. 1.) c. 18, rape was made punishable as a trespass by two years imprisonment and fine:—and was made felony by W. 2 (13 E. 1. st. 1.) c. 34: and benefit of clergy was taken away by 18 Eliz. c. 7. Previously to the stat. W. 1, rape was punishable by mutilation, and in old time was felony, *ante*, p. 878-9 (n. 287, 291).]

Rescue.—Kitch. 17 (the rescue of any taken for felony is felony, and here enquirable, cites 1 H. 7. 9.—Jenk. P. C. 22 (if any rescue be made within the jurisdiction of the court, upon the sheriff or any of his balliffs, or any other officers, it is to be enquired of and presented). And see Pow. 89. Shepp. 41. Scroggs 21. Greenw. 288.

Scolds.—Jenk. P. C. 21 (if there be any common barretors within the jurisdiction of the leet, *common scolds*, or makers of debate, to the annoyance and disturbance of their neighbours, this is enquirable). And see Hob. 246. Pow. 90. Shepp. 48. Scroggs 20.—*Per Cur.* in *The Queen v. Foxby*, 6 Mod. 11, 178, 213 ('the frequent repetition of it to the disturbance of the neighbourhood, makes it a nuisance, and as such it always has been punishable in leet, and *ideo* indictable'). Mo. 847. 2 Str. 1247. [A scold is said to be punishable by being put into the

ducking-stool, *Queen v. Foxby, sup.* 1 Hawk. P. C. c. 75. s. 14.]

Sorcerers.—Flet. 2. c. 52. Britt. c. 29 (of sorcerers, &c. and their receivers). And see Pow. 60, 61. Greenw. 237.

Stocks.—[*Vide* 4 Jac. 1. c. 5. s. 3. for repressing drunkenness. See also *Pillory, ante: Tiplers, post.*]

Suitors: Deciners.—Stat. 18 Edw. 2 (first you shall say unto us by the oath that you have made, if all the jurors that owe suit to this court be come, and which not).—Ib. (* of customs and services due to this court withdrawn, how, and by whom, and in what bailiff's times).—Kitch. 19 (if the suitors and deciners, *scil.* if any of them which are resident appear in person, or not; and if any of them make default, to present their names).—Ib. 41 (suitors, viz. resiants, which owe suit royal [real], capital pledges and deciners, of those of twelve years and not sworn).—Jenk. P. C. 20 (if all constables, headboroughs, deciners, tithing-men, and all others that owe any suit to this court, be present to do their suit and service, and to present the names of all that are absent or make default). And see Flet. 2. c. 52. Britt. c. 29. *Mirr.* c. 1. s. 17.

Swans.—Kitch. 18 ('also the taking of tame deer, with a felonious intent, is felony, the same law the taking of cygnets, *swans*, marked, and peacocks, and here enquirable,' cites Stamf. f. 25, C. 18 H. 8. 2).—*Vide* also as to swans, cygnets, or peacocks, marked, Shepp. 41. Pow. 73.

Tiplers.—[By 1 Jac. c. 9, and 4 Jac. c. 5. presentment is to be made in leet of persons who shall continue drinking or tipling, or shall suffer persons to continue drinking or tipling in alehouses, &c. See also 7 Jac. c. 10. 1 Car. 1. c. 4. Greenw. 298. And see *Alehouse-keeper*, *ante*.]

Tithing-men.—See *Officers*.

Toll (*Excessive Toll*).—Kitch. 22 (also if millers take excessive toll, is enquirable).—Jenk. P. C. 25 (if any millers take excessive toll, they are to be enquired of). And see Shepp. 17.—*Per* Rhodes, Serj. 4. Leo. 12 ('excessive toll is enquirable in leet').

Treason: *High Treason*.—Kitch. 16 (high-treason enquirable in leet as felony).—*Ib.* 43 (it is said that treason, as forging of money, is enquirable, cites 9 H. 6, 44).—Br. Leet 2 (cites S. C).—Jenk. P. C. 8 (the jury is to enquire of all high treasons). And see Pow. 46, 48-9. Greenw. 286.—Shepp. 10, 11. ('the things which are here

only to be enquired of, and not to be punished, are all felonies, which were so by the common law, though now they be made treason, as of such as are enemies to the King; falsify or abuse the King's coin or seal'.—*Ib.* 39 (you are to enquire of all offences which are or were felonies by the common law, (except about the death of a man): And in this consideration you are to enquire of those offences, that being treason do include felony, or be only felony, and those offences that being felonies by the common law are now by some statutes made treason. So you were to have enquired of and presented all that did imagine or endeavor the taking away the life of the King, &c. ; so you are to enquire of any that levy war against the Kingdom or adhere to the King's enemies; counterfeit any of the great seals or money; kill the justices of the one or other bench, in doing their offices, and such like offences).—*Scroggs* 84 (courtsleet enquire of all offences under high treason committed against the state and dignity of the King).

Petit-Treason.—*Br. Ley gager*, 99 (of petit treason, but not of high treason, cites 10 H. 6. 7).—*Kitch.* 16, 43 (petty treason is enquirable, but as felony at the common law, cites 12 Ass. 30, 19 H. 6. 47. 6 H. 7. 4).—*Ib.* (petty treason, and ancient felonies, that is to say, felonies at the common law, but not the death of a man).—

Jenk. P. C. 9 (petty treasons are, if any man kill his master or mistress, or a woman her husband; this is to be enquired of here as felony). And see **Pow. 46, 52. Kitch. 50**, citing **Stamf. 2.**

Treasure-Trove.—**Stat 18 Ed. 2** (of treasure found). And see **Stat. Wall. Britt. c. 29. Flet. 2. c. 52. Mirr. c. 1. s. 17. Kitch. 22. Greenw. 299. Sed vid. Br. Leet 43. Ante, p. 779.**

Tumbrel.—See *Pillory, ante.*

Vagabonds, (Wanderers).—See *Noctivagancy, ante.*

Victuals, (unwholesome Victuals).—**Scroggs 21** (you are to enquire of all bakers, butchers, poulterers, and others, that they vend good and wholesome meat and drink, fit for man's body; if any offend herein, you are to present and punish the offenders). **Ib. 10. See also Br. Leet, 1. 4 Inst. 263. Kitch. 21. Shepp. 45, 54. Pow. 114, 115. Greenw. 294-5. Vaughan v. Wood, 2 Mod. 56.**

Villeins.—See *Fugitives, ante.*

Usurers.—**Pow. 101** (usurers are offenders against the common law). And see **Stat. Wall. Britt. c. 29. Flet. 2. c. 52. Mirr. c. 1. s. 17. Shepp. 17.**

Waife, (bona fugitivorum).—Br. Leet 5 (the lord of the leet hath power to try waif by inquest, but the lord of the hundred not, for he cannot try by jury, having no power to compel them to be sworn, cites 44 E. 3. 19). Kitch. 45 (cites S. C.) *Vide* also, ib. 23. Jenk. P. C. 27. Shepp. 12. *Ante*, p. 771, 773.

Weights, (false weights, scales, and measures.)—
See *Measures, ante*.

Wreck.—Kitch. 24 (by the stat. of 15 R. 2. c. 3. wreck of the sea may be tried and determined by the law of the land; for that and for the profit of the King and the lord, it is enquirable in the leet). *Ante*, p. 774, 776-7.

END OF THE THIRD PART.

APPENDIX

TO

THE COPYHOLDER.

Rules to be observed in holding a Customary Court Baron.

CALLING THE COURT.

AT the accustomed period of the year for holding a general court, the steward is to issue his precept to the bailiff of the manor, in the form A. (post.), upon which the bailiff must affix a written notice of the day and hour appointed for the court, to the door of the parish church, or cause the notice to be read in church by the clerk, according to the usage of the manor: and this should be done at least fifteen days before the court (1).

If it should be found necessary to enforce the attendance of any homager, the bailiff should summon him personally (2).

And when a mise is joined upon a plaint in the nature of a possessory action or writ of right, it is expedient not to trust to a general notice, but to summon all the homage personally, in order to secure the attendance of at least 12 customary tenants, as it is generally considered that every issue in every court, shall be tried by 12 persons, and not by less (3).

(1) *Ante*, pt. 1. pa. 7.

(3) Kitch. 222-3, cites

(2) *Ante*, pt. 1. pa. 416, 503. Fortesc. fol. 54 & 57.; and

The Court Day.

Manor Rolls. } On the day appointed for the court, the
Minute Book. } steward is to be prepared with the rolls
of the manor for such references as may be necessary to
his guidance as the judge of the court, and for the in-

says, " The stat. West. 2. c. " be sworn of a jury, and how
" 13. is that the sheriff shall " many shall be impannelled,
" inquire by 12, and not by " is inconvenient where there
" less, and the same law shall " are more within the manor
" be in leet. And for that this " to be impannelled; and so it
" statute doth not extend to " seems if there be not 12 to
" court baron, presentment of " try the issue, they fail of
" articles there by less than 12 " power to minister law and
" may be, for one may hold " to do justice; and copy-
" court baron though there be " holder may sue by bill in
" but two suitors, and then " chancery, where there are
" they may inquire by two of " not 12 homagers within the
" articles for the lord; but " manor, or in action of tres-
" hard it is when every one is " pass at the common law, and
" inheritable to the laws of the " the party ought to be ad-
" realm; and the trial of the " mitted in the lord's court, to
" law is by 12, of issue joined " the intent to bring trespass
" between party and party, that " at the common law, and
" by your not power, that is to " there law is more truly ad-
" say, that there should not be " ministered than in court ba-
" 12 tenants of every jury, to " rons; and also if any sue in
" take from me my tryal, which " court barons for copyhold,
" the law gives to me; and if " he shall make his protes-
" you will try issue by less " tation to sue in nature of his
" than 12, you may impanel " writ at common law, and
" three or four of the friends to " the process and proceedings
" the parties, and to have no " shall be according to the
" number certain under 12, but " course of the common law,
" to have such a number as the " and they shall join issue ac-
" steward pleaseth, and to be " cording to the course of the
" at his choice, how many shall " common law, and there (ve-

spection of the tenants of the manor, or those claiming to be admitted, (upon payment of the established customary fees) (4): and he is also to be prepared with a minute book for entry of the several acts of court, the style of the court being already written in it.

Steward's appointment. Should it be the first court holden by the steward for the particular manor, it is usual and proper for him, previous to the opening of

" *nire facias*) is, that they shall
" cause to come 12 free and
" lawful men according to the
" course of the common law,
" and for that it seems that
" tryal of issues there between
" parties shall be by 12 and
" not by less."

Vide also Kitch. 223, where he adds " Enquest shall be by custom of the realm between party and party, in a court of record, by 12 at the common law," cites Dr. & Stud. f. 14. Again in the same page he says, " Verdict of 11, shall not be taken," cites 41 Ass. 11. 41 E. 3. f. 31, & 29 Ed. 3. f. 33. And again in the same page, " Every inquisition taken in the sheriff's turn shall be by 12, and the same law is said there in a leet by the equity of the statute of 6 H. 4. fol. 3. Notwithstanding, seek if less than 12 may try issue between parties in the

" court of a lord of copyhold,
" or not, where there are not
" 12 within the manor; for it
" is held by some, that it shall
" be tried by less, and I have
" seen a trial between three or
" four. But I intend it is hard,
" and especially where there
" are 12 and more copyholders
" within the manor, and also it
" appears in the register, that an
" action was removed out of
" the court baron, because
" there were but four suitors,
" and so I conclude, issue for
" copyholders shall not be tried
" by less than twelve, 6 H. 4.
" f. 1," Vide also Kitch. p. 224.
Co. Litt. 155. a. n. 3.

(4) These references will be greatly facilitated by keeping a very correct index book of every copyhold assurance, and of licenses and other grants, under an alphabetical entry of the names of the copyholders of the manor.

the court, to read his appointment to the stewardship, to the tenants assembled.

Opening the court. The bailiff is then to open the court by an audible proclamation; thus—"O YES; All manner of persons that owe suit and service to the customary court baron of A. Z. here this day to be holden for the manor of ———, or that have been summoned to appear at this court, draw near and give your attendance, every tenant answering to his name as he shall be called."

Suit roll. The suit roll should then be called over, marking such of the tenants as do not appear, or are not duly essoigned (5).

Swearing the homage. This being done the homage are to be sworn in the form B. (post), and their names written in the minute book, marking against them as

(5) *Ante*, pt. 1. pa. 416. It behoves every lord of a manor to call over the names of the copyholders at each general court, in order that the tenants may be the better enabled to watch over his interests, and to defeat any attempt to convert the copyhold into freehold tenure; for we have seen that copyholds are within the statute of non-claim, 4 Hen. 7, when the fine is levied by a *disseisor*, *ante*, pt. 1. pa. 98.; and it was decided in *Margaret Podger's* case, 9 Co. 105, that the lord shall not be allowed five years after the death of the copy-

holder, even if he be a copyholder for life, but must make his claim within five years after the fine is levied. It must not, however, be supposed, that it is in the power of the copyholder *covinously* to effect a bar to the lord by a feoffment and fine; the contrary was decided in *Fermor's* case, 3 Co. 77, Toth. 165, where the copyholder continued in possession, and paid his rent; and was recognized in the above case of *Margaret Podger*. See also Co. Litt. 330. b. N. 1. *Ante*, pt. 1, pa. 492, 493-4.

they are sworn, "SW.", and when sworn, the steward is to give them their charge.

Breviat of Charge. Unless any new tenant should be on the homage, this charge is usually confined to a brief detail of the business to be transacted, as far as the proposed acts of transmission of copyhold lands within the manor, have come to the steward's knowledge, and to the reminding the homage of their duty, to present the deaths of any tenants since the last court, in order that the lord may claim his advantages of heriot, &c.; and that the estates of such deceased copyholders may be put upon proclamation; and to present for inrolment any surrenders taken out of court by the tenants, or the bailiff or reeve, (when that is allowed by the usage of the manor): And likewise any acts by which the copyhold tenements may have been forfeited to the lord, as by executing a feoffment with livery, leasing for a term of years without license, committing waste, or the like.

Full charge. But when there are any new tenants, it may be proper to give the charge more at length, calling the attention of the homage, to the following detail of their duty, (and with such additional observations in conclusion, as the particular business of the day may seem to require on the part of the steward, as the judge of the court,) viz.

First. Reminding the homage, that it is their province to present the deaths of any of the tenants, since the last general court, and any surrenders taken out of court by themselves or other tenants of the manor, or the bailiff or reeve, when such is the custom (6).

Secondly. Impressing upon them the particular necessity of their informing themselves of any alienation of copyhold property within the manor, by a common

law assurance, and especially by deed of feoffment either with or without a fine, and whether by way of sale or mortgage, or otherwise, which alienation by feoffment would be a forfeiture to the lord of the estate so conveyed, and ought therefore more particularly to be presented in court for his instruction (7).

Thirdly. The necessity also of their inquiring of any leases of copyhold property, (or of any mortgage by demise operating as a lease) beyond the term of a year, or any greater term permitted by the custom of the manor, without the license of the lord for so doing; and which would also be a forfeiture, and presentable at the court (8).

Fourthly. Whether any of the copyhold tenants have been convicted of treason, or felony (9), or been outlawed for any capital crime (10), or have committed *voluntary* waste by pulling down houses, cutting down trees, digging for mines or the like: or *permissive* waste, by neglecting to repair buildings, or injury to lands in not attending to the ordinary rules of cultivation (11), or have inclosed where no inclosure has been before, or removed or abated an ancient inclosure, or land mark (12).

Fifthly. Whether any purchase has been made within the manor, by an alien or other persons incapacitated from purchasing or holding copyhold tenements (13).

Sixthly. Whether any encroachments have been made on the waste of the lord, in order to their immediate removal, as a possession for twenty years would be deemed adverse as to the lord (14).

(7) *Ante*, pt. 1. pa. 492.

(12) *Ante*, pt. 1. pa. 505.

(8) *Ante*, pt. 1. pa. 494, &c.

(13) *Ante*, pt. 1. pa. 123,

(9) *Ante*, pt. 1. pa. 498.

&c. 518.

(10) *Ante*, pt. 1. pa. 501-2.

(14) *Ante*, pt. 1. pa. 486,

(11) *Ante*, pt. 1. pa. 503.

502, &c., 539. Fisher, 180.

And lastly, charging the homage of their duty, to inquire of all other things concerning the lord's interest, or which in their consciences ought to be inquired of as between the lord and tenant, or as between tenant and tenant, and to make due presentment thereof accordingly.

Presentments. The homage are generally prepared with their presentments, but if not, they are to retire and consider of them.

The next step is for the steward to enter in his minute book, the above several presentments of deaths, surrenders out of court, acts of forfeiture, &c. and also a minute of any surrenders, warrants to enter satisfaction on conditional surrenders by way of mortgage, licenses to demise, &c. taken or granted since the last court, by the lord, or by the steward, or under any deputation by him.

The several surrenders and warrants out of court "should then be indorsed thus: "Presented and inrolled
"at a court held for the manor of ——— this —— day
"of ——," to which two at least of the homage are to subscribe their names.

Proclamations. When any tenant's death is presented, the bailiff should notify it at the door of the court by proclamation, thus:

"If any one can make any title or claim to the copy-
"hold tenements holden of this manor, whereof A. B.
"died seized, let him appear, and he shall be admitted,
"and in default, the same will be seized into the hands
"of the lord, for want of a tenant; this is the 1st. [2nd.
"or 3d.] proclamation."

And a like proclamation is to be made at the succeeding, or two next succeeding courts, if no one establishes a claim.

So when there is a custom to seize if the surrenderer do not come in on proclamations, and any surrender out of court is presented, or any surrender is made in court, the bailiff is to notify such surrender, thus :

“ A. B. [*the surrenderee*] come into court and be admitted to the copyhold tenements holden of this manor, and surrendered to your use by C. D. or the same will be seized into the lord’s hands.”

Surrenders in court. If any tenant wishes to make a surrender in court, of all, or part of his copyhold lands, the steward by reference to the court rolls, is to satisfy himself that the person is seized for the estate he desires to transmit to another, and, since the act of 48G.3. c. 149, is to make the copyholder sign a declaration of the proposed surrender being made on a sale, or mortgage, or otherwise, and, if on a sale or mortgage, of the amount of the consideration money to be paid, in order that the sum may appear on the face of the court rolls, and of the copy thereof, to be given to the purchaser, or mortgagee.

And then, (the copyholder holding one end of the rod, or other symbol, and the steward holding the other end,) the steward is to say, “ You surrender into the hands of the lord of this manor, by my hands and acceptance by the rod, All, &c., with their appurtenances, *and all your estate and interest therein*; to the use of C. D. *and his heirs for ever*, according to the custom of this manor.”

Should the surrender be for life only, or other particular estate, the words in italics are to be omitted, and others substituted to meet the particular case.

If the surrender be conditional by way of mortgage, the steward will add, “ But on the express condition, that this surrender is to be void, on payment to the said C. D. of £—— and lawful interest for the same, on

"the — day of — *next*, [or as the case may be]." And the copyholder is to answer affirmatively, relinquishing the rod or other symbol into the steward's hand.

Examination of feme covert. When the surrender is of the copyhold of the wife, or when the alienation of the husband does not defeat the wife's customary dower (15), she is to join in the surrender, and is previously to be questioned by the steward, apart from her husband, as to her voluntary consent to the proposed act, the same as on levying a fine of freehold lands (16).

Arrears of rent. It would seem that a copyholder is not chargeable with any arrears of rent due before his admission, so that previous to the admittance of any new tenant, the steward should ascertain that no rent remains due (17).

Admittances. If any persons attend to be admitted, the steward is to investigate their claims, with reference to the title, as it already appears upon the court rolls, or may be deduced by will, or intestacy, or otherwise, and to make a short minute of the circumstances, to enable him afterwards to draw out the admission in due form, and when the will or other document is very long, and it cannot be left with him, he will require to have a copy or full extract from it.

Being satisfied of the claimant's right to admittance, the steward (he having hold of one end of the rod or other symbol, and the claimant holding the other) is to say: "The lord of this manor, by me his steward, doth
" admit you tenant to the copyhold tenements holden of
" this manor, of which A. B. lately died seized, [or
" which have been surrendered to your use, at this

(15) *Ante*, pt. 1. pa. 87, &c.

(17) *Ante*, pt. 1. pa. 420.

(16) *Ante*, pt. 1. pa. 146-7.

" court, by A. B.] [or which were surrendered by A. B.,
 " to your use, on the — day of —.] And this is to
 " hold to you and your heirs, [or as the case may be] at
 " the will of the lord, by the accustomed fine, heriot,
 " rents, and services; in token whereof I deliver to you
 " this rod, [or other symbol,]" and which the steward
 relinquishes into the hand of the new tenant.

The preceding observations, although applicable to copyholds of inheritance, will render it unnecessary to lay down any particular rules for the steward's guidance, when the copyholds are held for lives. The only material variation in those cases, is, that the copyholder for lives, when desirous of adding or exchanging a life, surrenders *absolutely* to the lord, for the existing life or lives, to the intent that he will re-grant for the old and new lives, and the steward signifies that the lord by his hands grants *seizin* accordingly.

And when the reversionary cestui que vies have a legal interest, and there is no special custom authorizing the first life to destroy the whole estate (18), they must join in the surrender.

Fine. When the fine is certain, or the lord and tenant have agreed on the amount, it is then to be paid with the steward's fees, and also the court fees, (being usually a small payment to the bailiff, on every surrender and admittance;) but if the fine be uncertain and no agreement has been made, the steward is to assess it, and appoint a day and place for the payment (19).

Fealty. It was at this stage of the court business, that the oath of fealty, now usually, if not invariably, commuted by a small payment, and entered as respited, was administered (20).

(18) *Ante*, pt. 1. pa. 34, 138. (20) *Ante*, pt. 1. pa. 415.

(19) *Ante*, pt. 1. pa. 405, &c.

Surrender to will. When admittance has taken place, the copyholder may, if he please, surrender his estate to the uses of his will, which is done by a similar form to that of the surrender in court, as above noticed, the steward stating the surrender to be "to the use of such person or persons, for such estate or estates, intents and purposes, as he (the copyholder) by his last will and testament in writing already made, or afterwards to be made, hath given, devised, directed, or appointed, or shall give, devise, direct or appoint the same." (21).

Precept to seize. If three proclamations have been made as to any copyhold tenement, and no one claims to be admitted, the steward is to issue a precept to seize the same (22) in the form C (post).

PLAINTS.

Recoveries. When a copyholder, tenant in-tail, attends in court for the purpose of suffering a recovery, the steward should first ascertain whether he has been admitted, and if not, he will admit him according to the form of the gift, that is, to hold to him and the heirs general or special of his body, as the case may be, to be holden, &c., and this on payment of the customary fine.

The tenant in tail is then to surrender to the use of a tenant to the plaint in fee, who must be admitted.

The steward thereupon makes a minute of the following acts and proceedings, which are to be so entered

(21) *Ante*, pt. 1. pa. 267, &c. ten precept to seize is not ab-

(22) *Ante*, pt. 1. pa. 342; solutely necessary. *Ante*, pt. 1.
but it would seem that a writ- pa. 343.

upon an interrogatory address by the steward, to the demandant, tenant, &c., [as for instance, you C. complain against B. &c., and make protestation, &c. and you B. appear and answer to C. &c.] viz.

1st. Noticing that C. (the demandant) enters a plaint against B. (the tenant,) of a plea of land of the afore-said tenements, by the description of, &c. and makes protestation to prosecute his plaint in nature of a writ of entry, sur disseizin in the post at common law, and finds pledges to prosecute, viz. '*John Doe and Richard Roe.*'

2dly. That B. prays to answer without farther process, which is granted.

3dly. That thereupon C. in person demands the tenements of B. as his right, &c. and of which he was seized in fee, &c. in time of peace, &c. by taking the profits or esplees, &c. and into which B. hath not entry, but after the disseizin of Hugh Hunt within 30 years last past (23).

4thly. That B. in person defends his right, and calls to warrant A. (the tenant in tail) who enters into the warranty.

5thly. That thereupon C. demands the tenements of A., and saith that he was seized, &c. and into which, &c.

6thly. That A. defends his right, and calls to warrant D. (the common vouchee) who enters into the warranty.

7th. That C. then demands the tenements of D., and saith that he was seized, &c. and into which, &c.

8th. That D. defends his right, and denies that Hugh Hunt did so disseize C., and puts himself on the homage.

9th. That C. craves leave to imparle to a certain hour, which is granted, and the same hour given to D. [24]

(23) *Ante*, pt. 1. pa. 563-4. form, as the next minute may

(24) Unless other business be fixed.
requires attention, this is mere

10th. That at the said hour C. attends, but D. though called [*which is done by the bailiff's standing at the door of the court, and requiring that D. will come into court, and answer to C. on his plea of land, according to his defence, and is a form only, as D. purposely absents himself during the rest of the proceedings*] cometh not, and that upon his contempt and default, the court adjudge that C. do recover his seizin against B., and that B. have of the customary lands of A. within the manor, &c. (25), to the value, &c. and that A. have of the like customary lands of D. to the value, &c. and the said D. in mercy, &c.

11th. That C. prays the lord's precept to the bailiff, (W. Y.) to deliver him seizin, which is granted returnable forthwith. [And here the precept in the form D (post) is signed by the steward and given to the bailiff, who retires with C. to sign the return indorsed upon it.]

12th. That W. Y. and C. again attend, the former certifying that he had executed the precept and caused seizin to be delivered to the latter.

13th. That C. prays admission, [and here C. is to be admitted accordingly, to hold in fee.]

Lastly. C. the demandant and A. the tenant surrender, and also release (26), the premises and all their estate, &c. to the use of A. in fee, [or as he may desire] and the steward will then grant admittance accordingly. (27)

(25) *Ante*, pt. 1. pa. 78.

(26) See Scroggs, 310, 484, 492 [4th edit.] Cro Eliz. 391, *Pigott on Recoveries*, p. 103. MSS. note ib. cites *Greenwood's Jurisd. of Courts*, 455; Scroggs, 288, suggesting the expediency of taking a surrender and re-

lease, as no warranty can be annexed to the estate of a copyholder [*ante*, pt. 1. pa. 59, 60, n. 24]; and although it is certainly better to conform to this practice, yet I cannot think that it is essential.

(27) When the recovery is

Other Plaints.

Either at this stage, or immediately previous to any recoveries for barring estates tail, the bailiff should make further proclamation thus: "*O Yes. If any person will enter any plaint, let him come into court and he shall be heard.*"

The steward will then enter any plaints in the order they are tendered (28).

We will suppose that A. the eldest son and heir of B., who was the eldest son and heir of B. B., has been kept out of possession of a copyhold tenement by C. for upwards of 50 years, and that he is advised to try his title in a customary writ of right.

The steward on receiving the plaint and prayer of process from the demandant, will make a minute under a similar interrogatory address as in suffering a recovery, that A. claiming to be the eldest grandson and heir by custom of B. B. complains against C. of a plea of land, to wit, Of, &c. and makes protestation to prosecute his plaint in the form and nature of a writ of right patent at common law, and finds pledges, &c. and prays process, &c. (29).

suffered by attorney (which may be done even by a *feme covert*, by virtue of the act of 47 G. 3. s. 2. c. 9.) the steward must notice that the tenant in tail appears and answers, vouches, &c. by such a person his attorney, duly constituted by a certain power, &c. and which letter of attorney is to be inrolled at the end of the proceedings.

(28) It is submitted that the instance which follows of the entry of a plaint in the Manor Court, in the nature of the grand writ of right, will serve as an instruction to the steward in all other cases of suits, in the nature of Real Actions, for the recovery of copyhold rights.

(29) See the form of this plaint and prayer of process

And that a precept was accordingly issued to the bailiff to summon C. to appear and answer to the plaint at the next general court, and that the same day is given to A: which precept is then to be awarded in the form E. 1. (post).

With all convenient speed after this court, at all events not later than 15 days before the return of the writ of summons, the defendant is to be summoned on the above plaint, for which purpose the bailiff should go between sun-rise and sun-set, on the most conspicuous part of the estate, accompanied by two copyhold tenants at the least, and with them cite or warn the defendant, by reading the summons aloud, and by sticking a white wand on the land demanded, (a copy of the summons being also appended to the wand,) to appear at the return of such writ of summons. The defendant should also if possible be summoned personally, by delivering to him a copy of the summons and shewing him the original (30); and, in analogy to the practice in real actions (31), proclamation of the summons

at the end of *Precedents of Court Rolls (First Court)*. Vide also, *Form of Plaint in nature of an Assize of Novel Disseisin, and prayer of process, post (F. 1.)*:—*Plaint in nature of an Assize of Mort. D'Ancestor, and prayer of process, post (F. 2.)*:—*Plaint in nature of Formedon in remainder, and prayer of process, post (F. 3.)*:—*And Plaint of Customary Dower, and prayer of process, post (F. 4.)*

(30) I apprehend that a personal summons would alone be

sufficient. As to the formalities of executing a Summons, see *Dalton's Office of Sheriff*, 149. *Booth's Real Actions*, 5. *Chitty's Plead.* 3d vol. 624-5. An actual summons in real actions is now much disused, but the names of the summoners are returned by the Sheriff. *Booth's Real Actions*, 5, and n. 1, ib.

(31) By 31 Eliz. c. 3, s. 2, "for avoiding of secret summons in real actions, without convenient notice of the tenants of the freehold," it is enacted,

should be made by the bailiff at the door of the church or chapel where the land in question is situated, (32) immediately after divine service, on some Sunday, 14 days at the least before the return of the precept or writ of summons.

On or before the next court day, the bailiff is to indorse the return of the precept, in the form E. 2 (post.)

And at such court the steward will enter a minute of the return made by the bailiff of his having summoned C. as commanded (33).

The bailiff will then call on A. to appear, or that he will lose his plaint against C. (34).

that after every summons upon the land in any real action, 14 days at the least before the day of the return thereof, proclamation of the summons shall be made on a Sunday [immediately after divine service, and sermon, if any sermon there be, and if no sermon there be, then forthwith after divine service] at or near to the most usual door of the churches or chapel of that town or parish where the land whereupon the summons was made doth lie, and that proclamation so made as aforesaid shall be returned, together with the names of the summoners; and that if such summons should not be proclaimed and returned according to the tenor and meaning of that act, then no *Grand Cape* should be award-

ed, but *Alias* and *Pluries* summons as the case should require, until a summons and proclamation should be duly made and returned according to the tenor and meaning of that Act. Vide *Earl Clanrickard v. Earl Leicester*, W. Jones, 7. *Furnis v. Waterhouse*, 1 Mod. 197.

(32) Even if the church is in another county, still the proclamation should be at the church door. *Ragister's case*, Cro. Eliz. 472.

(33) See Rast. Ent. 130.

(34) The demandant has until the next court after appearance, but more usually counts directly, a considerable time for consideration and advice intervening between the courts. *Chitty's Plead.* 3d vol. 623.

Afterwards C. is to be called by proclamation three times (35). to answer to the plaint of A. (stating the substance of it), or that further process will be awarded against him (36).

And on the supposition of the attendance of A. in person, and of C. by his attorney D., the steward will enter, that A. appears in person, and that C. appears and puts in his place D. against the said A. in a plea of land.

A. is thereupon to produce his count or declaration against C., and a copy of it should be delivered to the tenant, if he appear in person, otherwise to his attorney.

(The entry of this count or declaration in the Appendix of Precedents of Court Rolls, will shew the proper form of it. It should commence with the title of the particular court).

The steward will then proceed with his minutes thus.

That thereupon A., in his own proper person, demands against the said C. — Messuages, &c. as his right and inheritance, by plaint in the form and nature, &c. and says that B. B., grandfather of A., was seized thereof in his demesne as of fee, &c. in time of peace, &c. to wit, (within 60 years last past,) by taking the profits or esplees, &c. And that from B. B. the right descended to B. the father of A., as the eldest son and heir by custom of B. B., and that from B. such right descended to A., as his eldest son and heir by custom, and that such is the right of A. he offers, &c.

That thereupon C., by his said attorney, denies the right of A., and puts himself upon the homage, and prays a precept of recognition, &c. and that A. doth the like (37).

(35) It should seem that one proclamation is sufficient, except in the King's courts. Kitch. 11, 12.

(36) See Chitty's Plead. 3d vol. 623.

(37) See the form of general Mise. G. 1. (*post.*) *Vide* also form of Mise on plaint in nature of an Assize of Mort D'Ancestor, G. 2. (*post.*) Rast. Ent. 131.

That such precept is granted for the then next court: which precept is to be awarded in the form H. (post.).

At such succeeding court, the parties and their advocates and witnesses being in attendance, the steward will enter the bailiff's return of the precept of recognition, and then the jurors impanelled by the bailiff to try the issue, if not challenged (38), are to be sworn (89) in the form I. (post.), and the witnesses to be produced on either side, are also to be sworn in the form K. (post.).

The pleadings, the nature of the case, and the evidence to be produced in support of the title of the tenant in possession, *as he holds the affirmative of the question in issue* (40), are to be first stated to the jury, and when that evidence is gone through, the advocate for the demandant opens his case and supports it by evidence, and afterwards the other side is heard in reply.

The steward must then sum up the evidence to the jury with precision and impartiality, and they will immediately retire and consider of their verdict, and on their return, after the bailiff has called over their names, the steward is to ask the jury, "*Do you find for the tenant or for the demandant?*" And he then enters in the minute book, "verdict for the tenant or demandant," [as the case may be]: if the verdict be for the tenant, the steward will also enter, that "therefore it is considered that he (the tenant) do hold the tenements to him and his heirs, quit of the demandant and his heirs for ever;" but if the verdict be for the demandant, the entry is, that "it

(38) As the law and rules in freehold cases are to govern the trial of any issue in copyhold cases, so the whole panel or any of the jurors may be challenged for any just cause, as interestness, partiality, &c.; see 3 Bl.

Com. 359. *et seq.*

(39) I apprehend that the steward may take the affirmation of a Quaker. See 1 Watk. on Cop. 34. n. d. [2 Ed.].

(40) See 3 Bl. Com. 366.

"is therefore considered that the demandant do recover
 "his seizin of the tenements, and do hold the same to him
 "and his heirs, quit of the tenant and his heirs, for ever."
 And a precept to the bailiff to put the demandant into
 possession, is to be awarded at his request, the same as
 on suffering a common recovery, and actual possession is
 to be given to the demandant accordingly (41).

Further instructions as to Pleaints. Should the de-
 mandant be an infant, the steward immediately after the
 entry of the bailiff's return to the writ of summons, and
 calling on the demandant and tenant to appear, will en-
 ter in his minute book, that A. appears and sheweth that
 he is an infant, and prays the court to assign E., as his
 next friend, to prosecute his plaint against A., and that
 E. is admitted by the court accordingly.

And then A. is to count against C. as before instructed,
 with this difference only, that the count after giving the
 title of the particular court, will commence thus: "A.
 "by E., who is admitted by the court here to prosecute
 "for the said A., who is an infant under the age of 21
 "years, as the next friend of the said A., demands, &c."

Should C. not appear at the second court, the steward
 will make an entry of such default, and of the award of
 grand cape, and second summons; which latter precept
 is to be executed in the same manner as the first was, it
 being doubtful whether the words 'take into the hands
 of the lord' are more than form (42).

(41) *Ante*, pt. 1. pa. 563.

(42) Mr. Chitty (3d vol. Plead.
 632.) says "As to that part of the
 "process which relates to the
 "view, and taking the premises

"into the lord's hands, I cannot
 "by any means discover the
 "mode of executing it; but I
 "rather think it may be best in
 "this instance for the bailiff to

Amercements. If any copyholder should have been amerced for non-attendance (43), or otherwise, an entry should now be made thereof by the steward; and such amercement is to be affeered by two of the oldest and most respectable tenants of the manor, who are to be sworn as affeers in the form L. (post.).

Licenses. As licenses, whether to demise or to take down buildings, or otherwise, operate as a dispensation of the forfeiture, which would otherwise accrue to the lord, and form no part of the ministerial acts of the steward, he is to exercise his discretion in complying with any applications which may be made by the tenants for this act of dispensation, unless indeed custom has established the right to a license for alienation by a common law assurance, on payment of a settled fine; and he is to make a minute of the terms of the grant, and to notify it to the homage (44).

At the conclusion of the business of the day, the steward should read over the heads of the several entries in his minute book, to the homage; and at the foot of the minutes should be written,

“ We present this as our verdict.”

to which the foreman is to subscribe his name, and so each homager after him, according to their priority of admission to copyholds within the manor (45). And then the bailiff is to declare the court at an end, by proclamation, thus:

“ take with him the viewers 520, &c.

“ (who must be distinct men from
“ the summoners) to the lands,
“ and verbally take possession of
“ them for the lord, when the
“ viewers have viewed them.”

(43) *Ante*, pt. 1, pa. 416.

(44) *Ante*, pt. 1, pa. 495,

(45) When any tenant enters the court after the homage are sworn, it is proper to let him sign his name, as having been present during part of the proceedings, but not sworn.

"O YES; All manner of persons that have appeared at this customary court baron of A. Z., have leave to depart hence, keeping their day and hour on a new summons." (46).

Special Court.

It is sometimes found to be convenient to hold a *special* customary court baron, to effect a proposed transmission of copyhold property (47); and in that case, it is usual to summon two or three homagers only, and after the court has been opened by the bailiff, to administer the following oath to them, viz.

"You, and each of you, shall inquire, and true presentment make, of all such things as shall be given to you in charge, and of all such other matters as shall come to your knowledge, presentable at this court (48); this you shall do, without fear, favor, or affection, hatred, or malice, So help you God."

The steward will then explain to the homage, the nature of the business, for which the court is called, who will make their presentments accordingly; and the entries by the steward of the acts of assurance, will correspond with the like minutes at a general court; which minutes are also in like manner to be presented as the *verdict* of the homage, and then the bailiff discharges the attendance of the persons assembled, by a similar proclamation as on the occasion of a general court.

(46) If it be found necessary to adjourn the court, it should be done by a proclamation of this nature, stating the hour to which it is so adjourned, when the bai-

liff should proclaim the re-assembling of the court.

(47) *Ante*, pt. 1, pa. 8.

(48) *Ibid*.

Further instructions in particular Cases.

Bankruptcy (49). When the bargainees of a bankrupt's estate are to be admitted, whether as assignees or purchasers, the bargain and sale from the commissioners is to be shortly presented, and then admission will follow in the ordinary form, on the prayer of such assignees or purchasers.

Inclosure allotments (50). When under inclosure acts the proprietors are required to be admitted to the new allotments, within a limited period, the act and award are to be briefly presented, and then admission will follow on the prayer of each copyholder; the recital of such act and award need not be repeated in each admission, as it will be sufficient to refer to the enrolment of them, under the first admittance, but the presentment of the act and award should form a part of each *copy* of admission.

Exchanges (51). Upon an exchange of copyholds, the parties should surrender to each other by distinct acts, to the use of the surrenderee and his heirs *in exchange, &c.*, and then admission will follow in the ordinary form.

Purchases by the lord (52). If the lord should purchase copyholds in the name of a trustee, the surrender and admittance will of course be the same as if the trustee had purchased on his own account. And when the lord purchases in his own name, the tenant is to surrender the estate in the common form, and also release all his right, &c. *to the use of the lord and his heirs, to the intent that he may do therewith his will and pleasure.*

(49) *Ante*, pt. 1, pa. 100, 360. Stark. 65.

399.

(51) *Ante*, pt. 1, pa. 137.

(50) *Ante*, pt. 1, pa. 28. n. 58.

(52) *Ante*, pt. 1, pa. 43, 137, 610.

And see *Cane v. Baldwin*. 1

PRECEDENTS OF COURT ROLLS.

FIRST COURT.

(Copyholds of Inheritance.)

The manor of ——— } A General Court Baron of A. Z.
 in the county of ——— } lord of the said manor, holden
 in and for the said manor, on ———
 the ——— day of ——— in the ———
 year of the reign of our sovereign
 Lord George the fourth, by the grace
 of God of the united kingdom of Great
 Britain and Ireland King, Defender of
 the Faith, and in the year of our Lord
 ———. Before J. S. steward of the
 said manor,

Homage { John Doe,
 { Richard Roe,
 { &c. } Sworn { Thomas Styles,
 { William Goodtitle,
 { &c.

(Presentment of the death of A. B. 1st proclamation, and admittance of C. B. his heir.)

(a. 1). (53). At this court the homage present the death of A. B., late one of the customary tenants of this

(53) Each copy to be made as evidence of title, is to contain the several corresponding letters, commencing with the title of the court (shewing before whom it is held), but omitting the names of the homage; as for instance, the copy for C. B. will contain

the title of the court, and a. 1 & 2; and the copy for E. F. is to contain the title of the court, & b. 1, 2, 3, & 4.

It is usual to mark the amount of the fine in the margin, both of the court roll and copy; and the title of each entry, (which I pro-

manor; and thereupon proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof the said A. B. died seized, to come into court and be admitted.

(a. 2). Now at this court comes C. B., the eldest son and heir according to the custom of this manor of the said A. B., and humbly prays to be admitted tenant to all and singular the customary or copyhold hereditaments lying within and holden of this manor, whereof the said A. B. so lately died seized as aforesaid, to wit, to [All, &c.] with their appurtenances, and to which same premises the said A. B. was admitted tenant at a general court holden for this manor, on the ____ day of _____. To which said C. B. the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said _____ hereditaments and premises, with their appurtenances, unto the said C. B. and his heirs, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so, (saving the right of the lord,) the said C. B. is admitted tenant thereof, and pays to the lord on such his admission, a fine certain of £_____, and his fealty is respited.

(Presentment of the death of C. D., and first proclamation.)

(b. 1). At this court the homage present the death of C. D., late one of the customary tenants of this manor,

pose to give in a parenthesis,) should be written in the margin of the court rolls.

Each copy should be examined with the rolls, and signed by the steward.

and thereupon proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof the said C. D. died seized (54), to come into court and be admitted.

(Presentment of his will and admittance of E. F. his devisee.)

(b. 2). And the homage also present, that the said C. D. in and by his last will and testament in writing, bearing date the ____ day of _____, the probate whereof is now produced in court, gave and devised All &c, and all other his real estates whatsoever, unto E. F. his heirs and assigns for ever.

(b. 3). Now at this court comes the said E. F., and humbly prays to be admitted tenant to all and singular the customary or copyhold hereditaments lying within and holden of this manor, so devised to him by the said will of the said C. D. as aforesaid, to wit, to [All &c,] with their appurtenances, and to which same premises the said C. D. was admitted tenant at a special court holden for this manor, on the ____ day of _____. *To which* said E. F. the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said _____ hereditaments and premises, with their appurtenances, unto the said E. F. and his heirs, to be holden of the lord by copy of court roll at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed. And so (saving the right of the lord), the

(54) If C. D. had surrendered “and which were surrendered by to the uses of his will, add here, “him to the uses of his will.”

said E. F. is admitted tenant thereof, and pays to the lord on such his admission, a fine certain of £—— ———, and his fealty is respited.

(Surrender to will.) (55).

(b. 4). And afterwards at this same court, the said E. F. in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all and singular the said customary or copyhold ——— hereditaments and premises, with their appurtenances, to which he hath been admitted tenant at this court as aforesaid, to the use and behoof of such person and persons, and for such estate and estates, ends, intents, and purposes, as he the said E. F. in and by his last will and testament in writing, already made or hereafter to be made, hath given, devised, directed, limited, or appointed, or shall give, devise, direct, limit, or appoint the same.

(Presentment of the death of G. H., first proclamation, and default recorded.)

(c). At this court the homage present the death of G. H. late one of the customary tenants of this manor, and thereupon proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof the said G. H. died seized, to come into court and be admitted, but no one comes, therefore let a second proclamation be made at the next court (56).

(55) Ante, pt. 1, pa. 268.

(56) No copy necessary.

(Presentment of absolute surrender from I. K. to N. O. of an undivided moiety, in consideration of an annuity, and admission of N. O.)

(d. 1). At this court the homage present, that on the ____ day of _____, now last past, I. K. then late of, &c. but then of, &c. one of the customary tenants of this manor, came before L. M. of &c, deputy steward, for that purpose and turn only, of the said J. S. (chief steward of this manor), and, for and in consideration of an annuity of £_____, secured to be paid to him the said I. K. and his assigns for his life, by N. O. of &c, in such manner as is mentioned in an indenture bearing date &c. and made between &c., did out of court surrender into the hands of the lord of this manor, by the hands and acceptance of the said deputy steward by the rod, according to the custom of this manor; All that the one undivided moiety or equal half part of the said I. K. (the whole into two equal parts to be divided), of and in all &c, and of and in the appurtenances thereunto belonging, and to which same undivided moiety and premises the said I. K. was admitted tenant, at a general court holden for this manor on the ____ day of _____; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, trust, benefit, property, claim, and demand whatsoever of the said I. K. in, to, or out of the said undivided moiety of the aforesaid hereditaments and premises, to the use and behoof of the said N. O., his heirs and assigns for ever, according to the custom of this manor (57).

(d. 2). Now at this court comes the said N. O., and humbly prays to be admitted tenant to the said undivided

(57) The presentment of the included in the copy, but it would surrender out of court should be not require a stamp.

moiety, hereditaments, and premises so surrendered to his use as aforesaid; to whom the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said undivided moiety or equal half part, of all and singular the said _____ hereditaments and premises, with their appurtenances, unto the said N. O. and his heirs, to be holden of the lord by copy of court roll at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord), the said N. O. is admitted tenant thereof, and pays to the lord on such his admission a fine certain of £_____, and his fealty is respited. [See form of Surrender to Will, ante (b. 4)].

(Presentment of conditional surrender from P. Q. to R. S.)

(e). At this court the homage present, that on the _____ day of _____, now last past, P. Q., of, &c. one of the customary tenants of this manor, came before the said steward, and in consideration of the sum of £_____, well and truly paid to the said P. Q. by R. S., of &c. did out of court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all, &c. with their appurtenances: (and to which same premises the said P. Q. was admitted tenant at a special court holden for this manor, on the _____ day of _____;) and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, trust, benefit, property, claim, and demand whatsoever, of the said P. Q. in, to, or out of the said hereditaments and premises, and every part thereof, to the use and behoof of the said R. S., his heirs and as-

signs for ever, according to the custom of this manor, subject, nevertheless, to and upon this express condition, that if the said P. Q., his heirs, executors, administrators, or assigns, did and should well and truly pay, or cause to be paid, unto the said R. S., his executors, administrators, or assigns, the full sum of £——, of lawful money of Great Britain, on the —— day of ——, with interest for the same, after the rate of five pounds per cent. per annum, computed from the date of the said surrender, clear of all taxes and deductions whatsoever, (and being the same principal and interest monies as are mentioned to be secured by the bond of the said P. Q. to the said R. S., bearing even date with the same surrender), then such surrender was to be void and of no effect (58).

(Absolute surrender from T. U. to V. W. and his admission.)

(f. 1). At this court comes T. U. one of the customary tenants of this manor, and in consideration of the sum of £——, to him in hand well and truly paid by V. W. of, &c. in open court, surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all, &c. with their appurtenances, (and to which same premises the said T. U. was admitted tenant, at a general court holden for this manor on the —— day of ——): And the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, trust, benefit, property, claim, and demand whatsoever of the said T. U., in, to, or out of the same premises and every part thereof; to the use and behoof of the said V. W., his heirs and assigns for ever, according to the custom of this manor.

(*f. 2*). Now at this court comes the said V. W., and humbly prays to be admitted tenant to all and singular the said customary or copyhold hereditaments and premises so surrendered to his use at this court as aforesaid; *to whom* the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said _____ hereditaments and premises, with their appurtenances, unto the said V. W. and his heirs, to be holden of the lord, by copy of court roll at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services thereof due and of right accustomed; and so (saving the right of the lord), the said V. W. is admitted tenant thereof, and pays to the lord on such his admission a fine certain of £ — — —, and his fealty is respited. [See form of Surrender to Will, ante (*b. 4*)].

(License to V. W. to demise.)

(*f. 3*). And afterwards, at this court, the lord of this manor, by the said steward, doth give and grant to the said V. W. full license and authority to demise and lease all and singular the said _____ hereditaments and premises, with their appurtenances, to which he the said V. W. hath been admitted tenant at this court as aforesaid, unto any person or persons willing to take the same as lessee or lessees of the said V. W. (but not by way of mortgage), his, her, or their executors, administrators, and assigns, to hold for any term or number of years not exceeding twenty-one years, computed from the ____ day of _____ last, saving always to the lord or lady, lords or ladies of this manor for the time being, all and all manner of fines, heriots, rents, customs, and services therefore due and of right accustomed; and for this license the said V. W. hath paid for a fine the sum of £ — — —,

[if the custom has settled the fine, add,] "according to the custom of this manor."

(Presentment of warrant to enter satisfaction on conditional surrender from A. B. to C. D.)

(g). At this court the homage present a warrant under the hand of C. D., of, &c. bearing date the ____ day of _____, whereby the said C. D. did acknowledge that she had received of A. B., of, &c. one of the customary tenants of this manor, the sum of £____, being in full of all principal and interest money due and owing from the said A. B. on a conditional surrender of certain customary or copyhold hereditaments lying within and holden of this manor, made by the said A. B. to the said C. D., on the ____ day of _____, in the year _____, for securing the principal sum of £____, with lawful interest thereon, as in the same surrender is expressed; and therefore the said C. D. did by the said warrant authorize the steward of this manor, to enter satisfaction for the same on the court rolls thereof, *whereupon* satisfaction is entered by the said steward accordingly (59).

(Surrender by A. B. (by attorney) to E. F. and his admission.)

(h. 1). At this court comes A. B., of, &c. one of the customary tenants of this manor, by C. D., of, &c. his

(59) I have supposed the succeeding surrender to be from the mortgagor named in this warrant, and the entry of that surrender shews, that it is not necessary to include the warrant in the copy.

The mode of entering satisfaction pursuant to the warrant, is for the steward to make the fol-

lowing note in the margin of the conditional surrender on the rolls, viz. "This surrender is become void by payment of all principal and interest monies thereby secured, as will appear by a warrant inrolled at a court held the ____ day of _____. J. S., steward." Ante, pt. 1, pa. 245-6.

attorney in this behalf lawfully constituted, by virtue of a power of attorney under the hand and seal of the said A. B., bearing date the — day of —, and intended to be inrolled at this court, and in consideration of the sum of £—, to the said C. D. for the use of the said A. B. in hand well and truly paid by E. F., of &c. in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all, &c. with their appurtenances, and to which same premises the said A. B. was admitted tenant at a general court holden for this manor on the — day of —; and the reversion &c. and all the estate, &c. to the use and behoof of the said E. F. his heirs and assigns for ever, according to the custom of this manor.

(h. 2). Now at this court comes the said E. F. and humbly prays, &c. [Admission to follow in the form f. 2].

(Surrender by G. H. (by way of settlement on his marriage) to L. M. and N. O. upon trusts, and their admission.)

(i. 1). At this court comes G. H., one of the customary tenants of this manor, and in consideration of a marriage agreed upon, and intended to be shortly hereafter had and solemnized between the said G. H. and I. K. of &c. [or, pursuant to a covenant in this behalf contained in an indenture, bearing date, &c. being the settlement made previous to the marriage then intended, and since had and solemnized between the said G. H. and I. K. now his wife,] in open court, surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all, &c. with their appurtenances, and to which same premises, the said G. H. was admitted tenant at a

special court holden for this manor, on the — day of —; And the reversion, &c. and all the estate, &c. to the use and behoof of L. M., of, &c. and N. O., of, &c. their heirs and assigns for ever, according to the custom of this manor. But, nevertheless, *in trust for the said G. H. and his heirs, in the mean time, and until the said intended marriage shall be had and solemnized, and immediately after the solemnization thereof* (60), upon and for the several trusts, intents, and purposes hereinafter expressed; that is to say; upon trust during the joint natural lives of the said G. H. and I. K. his intended wife, to pay the rents and profits of the said customary or copyhold hereditaments and premises, from time to time, as they shall grow due, and be received unto such person or persons, and in such manner as the said I. K., notwithstanding the said intended coverture by any note or notes, in writing, signed with her own hand, but not by way of anticipation, shall direct or appoint; And for want of such direction or appointment from time to time, upon trust to pay the same rents and profits, into the proper hands of the said I. K. for her separate use and benefit, exclusive of the said G. H., who is not to intermeddle therewith, nor are the same to be subject to his debts, control, or engagements. And it is hereby declared that the receipt and receipts of the said I. K., or of such her appointee or appointees as aforesaid, shall be a good and sufficient discharge for so much of the aforesaid rents and profits, as shall be therein respectively acknowledged or expressed to be received. And after the decease of either of them, the said G. H., and I. K., his intended wife, then in trust for the survivor of them, the said G. H. and I. K., and his or her assigns for and

(60) If the surrender be made after marriage, pursuant to articles executed previously, the words in italics to be omitted, and I. K. to be described throughout as I. H., the wife of G. H.

during the term of his or her natural life, and dispunishable for such waste as he or she may commit, with the license and consent of the lord or lady, lords or ladies of this manor, for the time being, and from and after the decease of the survivor of the said G. H. and I. K., his intended wife, in trust for all or any such one or more of the child or children of the said G. H. by the said I. K. to be begotten, for such estate or estates, in such parts, shares, and proportions, manner and form, and with, under, and subject to such powers, provisees, restrictions and limitations over, for the benefit of any one or more of such child or children, as they the said G. H. and I. K. by any deed or deeds, writing or writings, to be by them sealed and delivered in the presence of and attested by two or more credible witnesses, shall direct or appoint; and for want of such joint direction or appointment, then as the survivor of them, the said G. H. and I. K., by any deed or deeds, writing or writings, to be by such survivor sealed and delivered in the presence of, and attested by two or more credible witnesses, or by his or her last will and testament in writing, or any codicil or codicils thereto, to be signed and published in the presence of, and attested by three or more such witnesses shall direct or appoint; and for want of any such direction or appointment, and as to such part of the premises, concerning which no such direction or appointment shall be made, so as to be a complete disposition of the customary fee simple and inheritance thereof; and subject to any incomplete direction or appointment to be made as aforesaid, in trust for all and every the children of the said G. H. by the said I. K. to be begotten, equally to be divided between and amongst them share and share alike, their respective heirs and assigns for ever as tenants in common:—But in case there shall not be any child of the said G. H. by the said I. K., or being such, and all

and every of them shall happen to die under the age of 21 years, without leaving issue of his, her, or their body or respective bodies lawfully begotten him, her, or them surviving, then in trust for the survivor of the said G. H. and I. K., his or her heirs and assigns for ever. [But if the surrender be made pursuant to a covenant in marriage-articles, wherein the trusts are declared, then omit the words in italics, and all subsequent to them, and say, "Upon and for such trusts, intents, and purposes as are expressed and declared concerning the same customary or copyhold hereditaments and premises in and by the said indenture of the ____ day of _____, or such of them as are now subsisting and capable of taking effect" (61).

(i. 2). Now at this court come the said L. M. and N. O. and humbly pray to be admitted tenants to the said customary or copyhold hereditaments, and premises, with their appurtenances, so surrendered to their use as aforesaid; *To whom* the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said _____ hereditaments and premises, with their appurtenances, unto the said L. M. and N. O. and their heirs, upon and for such trusts, intents, and purposes, nevertheless, as aforesaid, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so, (saving the right of the lord) the said L. M. and N. O.

(61) Should it be desirable to give the trustees a power of sale, or a power of leasing with the license of the lord, (and with the approbation of the parents or the survivor of them, and of the guar-

dians of the children after their decease), the trusts should be declared by a separate instrument containing such powers: *Ante*, pt. 1, pa. 228, &c. 453, 460.

are admitted tenants thereof, in manner and form aforesaid, and pay to the lord on such their admission, a fine certain of — — —, and their fealties are respited.

(Surrender by P. Q. and R. S. (trustees for sale of W. Y.) to T. V., and his admittance.)

(k. 1). At this court come P. Q. of &c. and R. S. of &c. two of the customary tenants of this manor, and by virtue, and in pursuance of the trusts reposed in them, by the surrender herein after referred to, and in consideration of the sum of £— to them in hand well and truly paid by T. V. of &c. in open court, surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c. with their appurtenances, (and to which same premises, the said P. Q. and R. S. were admitted tenants at a general court, holden for this manor, on the — day of —, upon and under a surrender, previously made thereof, to their use, by W. Y., of &c., late one of the customary tenants of this manor, upon the trusts, and for the intents and purposes, in the same surrender mentioned). And the reversion, &c. and all the estate, &c. to the use and behoof of the said T. V., his heirs and assigns for ever, according to the custom of this manor.

(k. 2). Now at this court comes the said T. V. by X. Z. his attorney in this behalf, appointed by the court, (62), and humbly prays to be admitted tenant, to the said customary or copyhold hereditaments and premises, so surrendered to his use as aforesaid, to which said T. V. (in the person of his said attorney) the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said — — — hereditaments

and premises, with their appurtenances, unto the said T. V. and his heirs, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due, and of right accustomed, and so (saving the right of the lord) the said T. V. (in the person of his said attorney) is admitted tenant thereof, and pays to the lord on such his admission, a fine certain of — — —, and his fealty is respited.

(Plaint of right patent by A., against C., and precept of summons awarded.)

(1). At this court comes A. of &c. claiming to be the eldest grandson and heir, according to the custom of this manor of B. B. deceased, formerly one of the customary or copyhold tenants of this manor, in his own proper person, and complains against C., gentleman, in a plea of land (to wit) of ——— messuages, — tofts, — barns, — outhouses, — orchards, — gardens, — acres of land, — acres of meadow, and ——— acres of pasture, with the appurtenances, situate and being in the parish of —, in the county of —, aforesaid, and within and holden of this manor, by copy of court roll, at the will of the lord, according to the custom of this manor; and the said A. makes protestation to prosecute his plaint in this court, in the form and nature of a writ of our said lord the king, of right patent at common law, according to the custom of this manor, and finds pledges to prosecute his said plaint in this court, to wit, John Doe and Richard Roe, and the said A. prays process thereupon, to be made against the aforesaid C., according to the custom of this manor.

Therefore, according to the custom of this manor, a

precept (63) is awarded and issued to W. Y. bailiff of this manor, that he by good summoners, according to the custom of this manor, summon the said C. to be and personally to appear at the next general customary court baron, to be holden for this manor, that is to say, at _____, in the parish of _____ aforesaid, on _____ the _____ day of _____ now next ensuing, to answer to the said A. in the plea aforesaid. And the same day is given to the said A. here, &c.—[See the entry of the bailiff's return to this precept, and further proceedings under the above plaint, at the end of the Second Court].

Here follows the power of attorney, from the said A. B. to the said E. F. (see h. 1).

Know all men, &c. [the power to be copied verbatim].

Examined by me,

J. S. steward.

SECOND COURT.

The manor of _____ } A general court baron of
in the county of _____ } A. Z. lord &c. [for the manner
of entering the title of the court,
&c. and the names of the homage,
see ante, p. xxiii].

(Second proclamation on the death of G. H.)

(a) At this court, the second proclamation is made for any person or persons, claiming title to the customary,

(63) See the form of this precept post. (H).

or copyhold hereditaments, lying within and holden of this manor, whereof G. H. (whose death was presented at the last general court) died seized, to come into court and be admitted, but no one comes, therefore let a third proclamation be made at the next court (64).

(Presentment of the deaths of A. B. and his wife, and admittance of D. B. and E. B. their children, as tenants in common under a former surrender.)

(b. 1). (c. 1). At this court the homage present the deaths of A. B. and C. his wife, late respectively customary tenants of this manor, and that they had issue, only one son and one daughter, namely D. B. and E. B., which facts are verified by the affidavit of T. S. intended to be inrolled at this court: *And* they also present, that the said D. B. and E. B. are intitled to be admitted in equal undivided moieties, as tenants in common in fee simple, according to the custom of this manor, to the customary or copyhold hereditaments, hereinafter described, under and by virtue of a surrender made thereof, by the said A. B. and C. his wife, at a court holden for this manor on the ____ day of ____ (65).

(b. 2). And at this court comes the said D. B. and humbly prays to be admitted tenant to one undivided moiety, or equal half part, (the whole into two equal parts, to be divided) of All and singular the hereditaments lying within and holden of this manor so surrendered by the said A. B. and C. his wife as aforesaid, to wit, All, &c. with the appurtenances thereunto belong-

(64) No copy necessary.

(65) I have here supposed a surrender to have been made by A. B. and C. his wife, of the estate of the wife to the use of

themselves, for their respective lives, and after the death of the survivor, to the use of all the children of the marriage, as tenants in common in fee simple.

ing, *to which* said D. B. the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said one undivided moiety, or equal half part of the said customary or copyhold — — hereditaments and premises, with their appurtenances, unto the said D. B. and his heirs, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due, and of right accustomed, and so (saving the right of the lord) the said D. B. is admitted tenant thereof, and pays to the lord on such his admission, a fine certain of — —, and his fealty is respited.

(c. 2). And at this court comes the said E. B. (by the said D. B. her attorney, in this behalf appointed by the court) and humbly prays to be admitted tenant to one undivided moiety, or equal half part, (the whole into two equal parts, to be divided) of all and singular the hereditaments, lying within and holden of this manor, so surrendered by the said A. B. and C. his wife, as aforesaid, to wit, to All, &c. [the description to be repeated] with the appurtenances thereunto belonging, *to which* said E. B. (in the person of her said attorney) the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said one undivided moiety, or equal half part, of the said customary or copyhold hereditaments and premises, with their appurtenances, unto the said E. B. and her heirs, to be holden, &c. and so (saving the right of the lord) the said E. B. (in the person of her said attorney) is admitted tenant thereof, and pays to the lord on such her admission, a fine certain of — —, and her fealty is respited.

(Presentment of the death of F. G., first proclamation, and admittance of H. G. and J. G. in coparcenary.)

(d. 1). At this court the homage present the death of F. G., late one of the customary tenants of this manor, and thereupon proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments, lying within and holden of this manor, whereof the said F. G. died seized, to come into court and be admitted.

(d. 2). Now at this court come H. G. spinster, and J. G. spinster, the two only children and coheiresses, according to the custom of this manor, of the said F. G. deceased, and humbly pray to be admitted tenants in coparcenary, to all and singular the hereditaments lying within and holden of this manor, whereof the said F. G. so died seized as aforesaid, to wit, to All, &c. with the appurtenances, and to which same hereditaments and premises, the said F. G. was admitted tenant at a general court holden for this manor, on the ____ day of _____, to which said H. G. and J. G. the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said customary or copyhold ____ hereditaments and premises, with their appurtenances, unto the said H. G. and J. G. and their heirs, as tenants in coparcenary, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due, and of right accustomed, and so (saving the right of the lord) the said H. G. and J. G. are admitted tenants thereof in manner aforesaid, and pay to the lord on such their admission, a fine certain of — — —, and their fealties are respited.

(Conditional surrender from K. L. to M. N. and his admittance.)

(e. 1). At this court comes K. L. of &c., one of the customary tenants of this manor, and in consideration of the sum of £——— to him in hand well and truly paid by M. N. of &c., in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c. with the appurtenances, to which same premises the said K. L. was admitted tenant at a court holden for this manor, on the ____ day of _____, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, trust, benefit, property, claim and demand whatsoever, of the said K. L. in, to, or out of the same premises, and every part thereof, to the use and behoof of the said M. N., his heirs and assigns for ever, subject nevertheless to and upon this express condition, that if the said K. L., his heirs, executors, administrators, or assigns, do and shall well and truly pay, or cause to be paid, to the said M. N., his executors, administrators, or assigns, the sum of £——— of lawful money of Great Britain, on the ____ day of _____, together with interest for the same, after the rate of five pounds per cent. per annum, computed from the date of this surrender, clear of all taxes and deductions whatsoever, (being the same principal and interest monies, as are mentioned to be secured by the bond of the said K. L. to the said M. N., bearing even date with this surrender); Then this present surrender shall cease and be void, otherwise the same is to remain in full force and virtue.

(e. 2). (66) And afterwards at this court comes the

(66) It is sometimes the agree- gagee should be admitted tenant
ment of the parties, that the mort- to the lord immediately after the

said M. N., and humbly prays to be admitted tenant to the customary or copyhold hereditaments and premises, with their appurtenances, so surrendered to his use as aforesaid, *to whom* the lord of this manor by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with their appurtenances, unto the said M. N. and his heirs, subject nevertheless to and upon the condition mentioned in the above surrender, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due, and of right accustomed, and so (saving the right of the lord) the said M. N. is admitted tenant thereof, and pays to the lord on such his admission, a fine certain of — — —, and his fealty is respited.

(Presentment of breach of conditional surrender, from P. Q. to R. S.)

(f. 1). At this court it is represented to the homage by R. S. of, &c. that default was made in payment of the principal sum of £ — — —, secured to him the said R. S. by a conditional surrender from P. Q. of &c. one of the customary tenants of this manor, of certain customary or copyhold hereditaments, lying within and holden of this manor, and which surrender was presented and inrolled at the last general court, and that the sum of £ — — — is now due and owing for principal and interest, upon and by virtue of the said surrender, and thereupon the homage present that the condition of the surrender, so made to the said R. S. as aforesaid, is broken, and the estate of the said R. S. thereby become absolute at law.

surrender, but it is more usual not to disturb the legal estate until the condition is broken, particu-

larly in manors where the fine is arbitrary.

(Admittance of R. S. on the above forfeited condition.)

(f. 2). Now at this court, the said R. S. humbly prays to be admitted tenant to the customary or copyhold hereditaments, lying within and holden of this manor, so surrendered to his use as aforesaid, to wit, to All, &c. with the appurtenances, to whom the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said customary or copyhold — — hereditaments and premises, with the appurtenances unto the said R. S. and his heirs, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due, and of right accustomed, and so (saving the right of the lord, and the right of any person or persons having an equity of redemption in the premises), the said R. S. is admitted tenant thereof, and pays to the lord on such his admission, a fine certain of — — —, and his fealty is respited.

(Surrender to uses by T. W. pursuant to the marriage articles, of his son V. W.; and admittance of V. W. for life.)

(g. 1). At this court comes T. W. one of the customary tenants of this manor, and in pursuance of certain articles executed previous to a marriage lately had and solemnized between V. W. (eldest son of the said T. W.) and S. T. spinster, and in consideration of the said marriage, and of the natural love and affection which the said T. W. hath and beareth for his said son V. W., in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All, &c. with the appurtenances, to which said hereditaments and premises

the said T. W. was admitted tenant at a special court holden for this manor on the ____ day of _____. And the reversion, &c. and all the estate, &c. to the use and behoof of the said V. W. and his assigns, during the term of his life, without impeachment of any such waste as he may commit with the license of the lord or lady, lords or ladies of this manor for the time being (67); and from and immediately after the decease of the said V. W. to the use and behoof of the said S. W., now the wife of the said V. W., and her assigns, during the term of her life, with the like permission to commit waste, as is herein before given to the said V. W. (68); and immediately after the decease of the survivor of the said V. W. and S. his wife, to the use and behoof of the first son of the body of the said V. W. by the said S. his wife to be begotten, and the heirs of the body of such first son lawfully issuing, and for default of such issue, to the use of the 2nd, 3rd, 4th, and all and every other son and sons of the body of the said V. W. by the said S. his wife, to be begotten, severally, successively, and in remainder, one after another, as they and every of them shall be in priority of birth and seniority of age, and of the several and respective heirs of the body and bodies of all and

(67) Should the lord consent to waive his right to enter for a forfeiture of the tenant for life, a limitation is to be here inserted to trustees and their heirs for the life of V. W. for preserving contingent remainders, *ante*, pt. 1, pa. 454 to 460.

(68) When a provision of this nature is meant to be in bar of dower and freebench, that intention should be declared by a separate instrument; and when it is

desired to create a power of sale, or any other powers frequently inserted in marriage settlements, such as a power for the husband to limit a jointure to a future wife, or to charge the estate with portions for children by such wife, it will be necessary to vest the legal estate in trustees, declaring the trusts by a separate instrument, to be referred to in the surrender to and admittance of the trustees. *Ante*, pt. 1, pa. 228, &c. 453, 460.

every such son and sons lawfully issuing, the elder of such sons and the heirs of his body issuing to be always preferred, and to take before the younger of the same son and sons, and the heirs of his and their body and bodies issuing, and for default of such issue, to the use and behoof of the said T. W. his heirs and assigns for ever, according to the custom of this manor.

(g. 2). And at this court comes the said V. W., and humbly prays to be admitted tenant for the term of his life, by virtue of the said surrender so made by the said T. W. to his use as aforesaid, and with such remainders over as in the same surrender are mentioned, to all and singular the aforesaid customary or copyhold — — hereditaments and premises, with their appurtenances; to whom the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said — — hereditaments and premises hereinbefore described, and so surrendered by the said T. W. as aforesaid, with their appurtenances, unto the said V. W. and his assigns, for the term of his life, and with such remainders over as aforesaid, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said V. W. is admitted tenant thereof, in manner and form aforesaid, and pays to the lord on such his admission, a fine certain of £ — —, and his fealty is respited (69).

(69) We will now suppose V. W. and his wife to be dead, and J. W. to be their eldest son, and that he is desirous of acquiring an estate in fee simple, by suffer-

ing a common recovery according to the custom of the manor.

And as the admittance of V. W. for his life, was the admittance of all in remainder, (ante, pt. 1, pp.

(Presentment of the deaths of V. W. and wife, Recovery suffered by J. W. their eldest son, and his admittance in fee.)

(k). At this court the homage present the deaths of V. W., late one of the customary tenants of this manor, and S. W. his wife, leaving J. W., of, &c. their eldest son, who by virtue of a certain surrender made by T. W., the father of the said V. W. at a court holden for this manor on the ____ day of _____, is now tenant in tail general in possession, according to the custom of this manor, of all and singular the customary or copyhold hereditaments hereinafter described, and to which the said V. W. was admitted at the last mentioned court for the term of his life, with such remainders over as were expressed in the aforesaid surrender.

Now at this court comes the said J. W., and in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All, &c. with their appurtenances: And the reversion, &c. and all the estate, &c. to the use of B., his heirs, and assigns for ever, according to the custom of this manor, and for the purpose of suffering a common recovery of the said hereditaments and premises, in the manner hereinafter men-

150, 353, 391), it would not be necessary to admit J. W. in tail; but if the father had not been admitted, then such admission in tail would be the first act.

Supposing, in a similar case, the father to be living and willing to join the son in unfettering the estate, the only variation would be, that the father must be a party

to the surrender making a tenant to the plaintiff, or that he alone should surrender to the tenant to hold for the natural life of the father, or for the joint lives of the father and the tenant; and the surrender after the recovery would then probably be to the use of the father for life, with remainder to the son in fee.

tioned, *to which* said B. (being present here in court), the lord of this manor, by the said steward, grants seizin of the same premises by the rod, *to have and to hold* the said messuages, tenements, hereditaments, and premises, with their appurtenances, unto the said B. and his heirs, by copy of court roll at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed; and so, (saving the right of the lord), the said B. is admitted tenant thereof, but he pays no fine to the lord for such his admission, because this estate is only had for further assurance, and his fealty is respited.

And afterwards (sitting the court) comes C., of, &c. and in full and open court makes his plaint against the said B. of a plea of land of the tenements aforesaid, by the names and descriptions of ——— messuages, ——— stables, ——— orchards, ——— gardens, ——— acres of land, ——— acres of meadow, and ——— acres of pasture, with the appurtenances within this manor and the jurisdiction of this court, and makes protestation to prosecute his plaint in this court, in the form and nature of a writ of entry *sur disseizin en le post* at common law, according to the custom of this manor, and finds pledges to prosecute, to wit, John Doe and Richard Roe, whereupon the said B. being present here in court, prays leave to make answer to the said C. without further process, and it is granted to him.

And thereupon the said C. in person demands against the said B. the tenements aforesaid, with their appurtenances, as his right and inheritance, and saith that he was seized of the same in his demesne as of fee and right, at the will of the lord, according to the custom of this manor, in time of peace, in the time of our lord the king that now is, by taking the profits or esplees thereof to

the value &c.; and into which the said B. hath not entry but after the disseizin, which Hugh Hunt unjustly and without judgment made upon the said C. within thirty years last past, and therefore prosecutes his plaint, &c.

And thereupon the said B., present here in court, defends his right, when &c., and calls to warrant the said J. W. who (present here in court), enters into the warranty, and freely warrants the tenements aforesaid, with their appurtenances, to the said B.

And thereupon the said C. demands against the said J. W., tenant by his own warranty, the tenements aforesaid, with their appurtenances, in form aforesaid, and saith that he was seized of the same in his demesne as of fee and right, at the will of the lord, according to the custom of this manor, in time of peace, in the time of our lord the king that now is, by taking the profits or esples thereof to the value &c., and into which &c., and therefore prosecutes his plaint, &c.

Whereupon the said J. W., present here in court, defends his right, when &c., and calls to warrant D., who also, present here in court, enters into the warranty, and freely warrants the tenements aforesaid, with their appurtenances, to the said J. W.

And thereupon the said C. demands against the said D., tenant by his own warranty, the tenements aforesaid, with their appurtenances, in form aforesaid, and saith that he was seized of the same in his demesne as of fee and right, at the will of the lord, according to the custom of this manor, in time of peace, in the time of our lord the king that now is, by taking the profits or esples thereof to the value &c., and into which &c., and therefore prosecutes his plaint &c.

And the said D. tenant by his own warranty, defends his right, when &c., and saith that the said Hugh Hunt did not disseize the said C. of the tenements aforesaid,

with their appurtenances, as he by his plaint and declaration above doth allege; and of this he puts himself upon the homage (70). And the said C. craves leave to imparle until a quarter before four of the clock of the afternoon of this day, and it is granted to him by the court, and the same hour is given to the said D.

And afterwards, at the said hour, the said C. cometh into court in person, but the said D., although solemnly called, cometh not again, but departeth in contempt and maketh default, therefore it is considered and adjudged by the court, that the said C. do recover his seizin against the said B. of the tenements aforesaid, with their appurtenances; and that the said B. have of the customary lands and tenements of the said J. W. within this manor and the jurisdiction of this court, to the value, &c. And that the said J. W. have of the customary lands and tenements of the said D. within this manor and the jurisdiction of this court, to the value, &c. And the said D. in mercy, &c.

And thereupon the said C. prays the lord's precept, according to the custom of this manor, to be directed to E., bailiff of this manor, to cause full seizin of the tenements aforesaid, with their appurtenances, to be delivered to him, which is granted accordingly, returnable here forthwith (71).

And afterwards, (sitting the court), the said E. and C. come again into court, and the said E. certifies to the court that by virtue of the said precept to him directed, he hath caused full seizin of the tenements aforesaid, with their appurtenances, to be delivered to the said C., as by the said precept he was commanded &c.

(70) This is of the same force as a tenant's putting himself on the grand assize at common law.

See *Stafford's case*, Dy. 111, b.

(71) See the form of this precept, post. (D).

Whereupon the said C. prays to be admitted tenant thereto, to whom the lord of this manor by the said steward grants seizin thereof by the rod, *to have and to hold* all and singular the said messuages or tenements, hereditaments and premises, with their appurtenances, unto the said C. and his heirs, *to be holden* of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so, (saving the right of the lord,) the said C. is admitted tenant thereof, but he pays no fine, because &c., and his fealty is respited.

And afterwards at this same court, the said C. and B., in their own proper persons, surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor; and also release all and singular the said messuages or tenements, hereditaments and premises, with their appurtenances, so recovered, and to which the said C. hath been so admitted as aforesaid, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, and interest whatsoever of them the said C. and B., and each or either of them, in and to the same premises and every part thereof, to the use and behoof of the said J. W., his heirs and assigns for ever, according to the custom of this manor. *To which* said J. W. the lord of this manor by the said steward grants seizin thereof by the rod, *to have and to hold* the said messuages or tenements, hereditaments and premises, with their and every of their appurtenances, unto the said J. W. and his heirs, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents

and other duties and services therefore due and of right accustomed; and so, (saving the right of the lord,) the said J. W. is admitted tenant thereof in manner and form last aforesaid, and pays to the lord on such his admittance a fine certain of £— — — [But if J. W. had been admitted in tail, and paid a fine to the lord, then the entry would be, "but he pays no fine to the lord on such his admittance, having paid a fine on his admittance in tail at this court,"] (72), and his fealty is respited.

(Bailiff's return to precept of summons in plaint of right patent, A. demandant, C. tenant.)

(i. 1). At this court W. Y., the bailiff of this manor, returns, that in pursuance of the precept to him issued at the last general court holden for this manor, he did duly summon C. to appear at this court to answer to the plaint of A. entered at the last general court, as by the said precept he was commanded (73).

(72) *Ante*, pt. 1, pa. 394.

(73) Should C. not appear, the entry will be thus:

And now here at this court comes the said A. and offers himself against the said C. of the plea aforesaid, and the said C. comes not, but makes default:—

Cape. Therefore according to the custom of this manor, it is considered that the messuages, lands, tenements, and hereditaments aforesaid, with the appurtenances, be taken into the hands of the lord, &c. and the day, &c. [Rast. Ent. 130]. And a precept is awarded and issued to W. Y.,

bailiff of this manor, that he take, &c. [*Ante*, p. 19, n. 42.] and by good summoners, according to the custom of this manor, summon the said C. to be and personally to appear at the next general customary court baron to be holden for this manor, that is to say, at —, in the parish of — aforesaid, on — the — day of — now next ensuing, to answer to the said A., as well of the principal plea, as of the default aforesaid. The same day is given to the said A., here, &c. [See the form of the above precept, post. (F. 3)].

(Count in plaint of right patent, plea, mise joined, and precept of recognition awarded. (74).

(i. 2). And at this court comes the said C., by D. his attorney, lawfully constituted, and thereupon the said A. in his own proper person [or by the said E. his next friend, as the case may be,] demands against the said C. — messuages, — tofts, — barns, — out-houses, — orchards, — gardens, — acres of land, — acres of meadow, and — acres of pasture, with the appurtenances, situate and being in the parish of —, in the county of — aforesaid, and within and holden of this manor by copy of court roll, at the will of the lord, according to the custom of this manor, as the right and inheritance of the said A., according to the custom of this manor, by plaint in this court, in the form and nature of a writ of our said lord the king, of right patent at common law, according to the custom of this manor; and whereupon the said A. says that B. B., deceased, grandfather of the said A., and formerly one of the customary or copyhold tenants of this manor, was seized of the tenements aforesaid, with the appurtenances in his demesne as of fee and right (75) at the will of the lord, according to the

(74) Should A. be an infant, the following entry of the admission of E. as his *Prochein Amy*, is to precede the count or declaration against C. viz.:

And hereupon the said A. sheweth to the court, that he the said A. is an infant under the age of 21 years, wherefore he prays the court here to assign unto him E., of, &c. as the next friend of him the said A., to prosecute the said plaint, in the nature and form

aforesaid, against the said C. Wherefore the said E. is admitted by the court here, to prosecute the said plaint, in the nature and form aforesaid, for the said A. (being an infant under the age of 21 years), against the said C.

(75) It is necessary for a demandant in a writ of right to allege in his count, that his ancestor was seized of right, as well as in his demesne as of fee. *Ante*, pt. 1, pa. 561, 586.

custom of this manor, in time of peace, in the time of the lord George the third, late King of Great Britain, to wit, within 60 years now last past, by taking the esplees and profits thereof (76), to the value &c., and that from the said B. B. the right descended to B. the father of the said A., the demandant, as the eldest son and heir of the said B. B., according to the custom of this manor, and that from the said B. the right descended to the said A., the demandant, as the eldest son and heir of him the said B., according to the custom of this manor, and that such is the right of the said A., the demandant, he the said A. offers, &c. and therefore prosecutes his plaint, &c. (77).

(i. 3). And at this court proclamation being solemnly made for the said C. to come into court and plead to the plaint and declaration exhibited by the said A., comes the said C. by the said D., his attorney, and denies the right of the said A. the demandant, and the seizin of the said B. B. from whom, &c. and the whole, &c. and especially the tenements in the aforesaid plaint and declaration described, with the appurtenances; and the said C. puts himself upon the homage according to the custom of this manor, and prays that a recognition may be made whether he the said C. hath a greater right to hold the tenements aforesaid, with the appurtenances as he now holds them, or the said A. the demandant, to hold the same tenements with the appurtenances, as he hath demanded the same, &c.

(i. 4). And the said A., being present here in court, doth the like (78).

(76) A writ of right cannot be maintained without shewing an actual seizin by *taking the esplees*, either in the demandant himself, or the ancestor from whom he claims. *Ante*, pt. 1, pa. 561. n. 101.

(77) See other forms of count, Chitty's Plead. 3d. vol. 640, 641-2, 667.

(78) See form of *General Mise* in manor court, post. (G. 1.): Form of mise on plaint of assize of mort d'ancestor, post. (G. 2.): Form of

(i. 5). Therefore a precept is issued by the said steward to W. Y. the bailiff of this manor (79), commanding him that he summon by good summoners, twelve good and lawful men, copyhold tenants of this manor, that they be before the lord or steward of this manor, at the next court here to be holden, that is to say, at _____, in the parish of _____, in the said county of _____, on _____, the _____ day of _____ next coming, at the hour of _____ of the clock in the forenoon of the same day, ready upon their oaths, to make recognition of the mise so joined between the said C. and A. [*See continuation of this suit at the end of the 3d court, post.*]

Here follows the above mentioned affidavit of T. S. (see *b. 1. c. 1*). [the affidavit to be copied *verbatim*.]

Examined by me,
J. S. steward.

THIRD COURT.

The manor of _____ } A general court baron of A. Z.
in the county of _____ } lord, &c. [*See this form, ante. p. 23.*]

(*Third proclamation on the death of G. H. and precept to seize.*)

(a). At this court the third proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof G. H. (whose death was presented at a

mise on plaint of formedon in remainder, *post.* (G. 3.)

(79) See the form of this precept of recognition, *post.* (H. 1.)

Vide also form of precept of recognition in assize of mort d'ancestor, *post.* (H. 2).

general court held the — day of —), died seized, to come into court and be admitted, and because no person claims to have title and to be admitted to the same hereditaments, a precept is awarded and issued to W. Y., the bailiff of this manor, to seize the same customary or copyhold hereditaments into the hands of the lord of the manor, until some person or persons shall appear and establish his or their right to be admitted to the vacant tenancy (80).

[At the succeeding general court a minute must be entered of the return made by the bailiff, of his having seized the estate as commanded by the precept].

(Warrant to enter satisfaction on conditional surrender from K. L. to M. N.)

(b). At this court comes M. N. of &c., and acknowledges to have received from K. L. of &c., on the — day of — now last past (81), the sum of £ — —, being the full amount of all principal and interest monies secured to him the said M. N., by and under a conditional surrender, of certain customary or copyhold hereditaments, lying within and holden of this manor, made by the said K. L. to the use of the said M. N. and his heirs, at the last general court, and under which surrender the said M. N. was admitted at the same court; and the said M. N. therefore authorizes the said steward, to enter such his acknowledgment of satisfaction on the court rolls of this manor, *Whereupon* satisfaction is entered by the said steward accordingly.

(80) But if the custom allows of an *absolute* seizure, this entry must be altered accordingly, *Ante*, pt. 1. pa. 343, &c.

(81) This I have supposed to be the day on which the money was

made payable, so that the condition of the surrender was strictly performed, and in that case the surrenderor might re-enter without new admittance, *Ante*, pt. 1, pa. 245, 353, 395.

(Warrant to enter satisfaction on conditional surrender, from P. Q. to R. S.; and Re-surrender from the heir of R. S. to P. Q., and his admittance.)

(c. 1). At this court comes A. B. of &c. sole acting executor of the last will and testament of R. S. of &c., and in open court acknowledges to have received of and from P. Q. of &c., all principal and interest monies secured and made payable under and by virtue of a conditional surrender, of certain customary or copyhold hereditaments, lying within and holden of this manor, made by the said P. Q. to the use of the said R. S., and his heirs, at a general court held for this manor, on the ____ day of ____ [or made &c. and inrolled at the last general court, as the case may be]; and the said A. B. authorizes the said steward to enter such his acknowledgment of satisfaction, on the court rolls of this manor, *Whereupon* satisfaction is entered by the said steward accordingly (82).

(c. 2). And afterwards at this court comes C. S. of &c. eldest son and heir, according to the custom of this manor, of the said R. S. deceased, and in consideration of the payment and satisfaction in manner aforesaid, of the principal and interest monies secured by the said conditional surrender, in open court, surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c. with the appurtenances, to which said hereditaments and premises, the said R. S. was admitted tenant at the last general court, held for

(82) The money not being paid in this case at the time it became due, a re-surrender from the heir of the mortgagee is necessary,

which follows, with the re-admittance of the mortgagor, *Ante*, pt. 1, pa. 245, 301.

this manor, under and by virtue of the aforesaid conditional surrender, and the reversion &c. and all the estate &c. to the use and behoof of the said P. Q., his heirs and assigns for ever, according to the custom of this manor.

(c. 8). Now at this court comes the said P. Q., &c. [then P. Q. is to be re-admitted].

(Presentment of the death of L. O., first proclamation; presentment of his will, and admittance of T. C. and W. B. his devisees in trust.)

(d. 1). At this court the homage present the death of L. O., late one of the customary tenants of this manor, and thereupon proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments, lying within and holden of this manor, whereof the said L. O. died seized, to come into court and be admitted.

(d. 2). And afterwards at this court the homage present that the said L. O., in and by his last will and testament in writing, bearing date the — day of — (the probate whereof is produced in court), gave and devised all his customary or copyhold hereditaments, situate &c. within this manor, unto his friends T. C. and W. B. and their heirs, upon and for such trusts, intents, and purposes, as in the same will are expressed (83).

(d. 3). Now at this court come the said T. C. and W. B. and humbly pray to be admitted tenants to the customary or copyhold hereditaments, within this manor, so

(83) When the trusts are very long, and of a contingent nature, it may be desirable to admit the trustees, with a general reference to the will, leaving the particular

trusts to be presented and recorded, together with the eventual circumstances calling for a surrender on the part of the trustees. *Ante*, pt. 1, pa. 460, &c.

devised to them as aforesaid, upon and for the trusts, intents and purposes expressed concerning the same, by the said will of the said L. O. deceased, to wit, to All, &c. with the appurtenances, and to which same hereditaments and premises, the said L. O. was admitted tenant, at a special court holden for this manor, on the — day of —, *To which* said T. C. and W. B. the lord of this manor, by the said steward, grants seizin thereof by the rod, *To have and to hold* all and singular the said — hereditaments and premises, with their appurtenances, unto the said T. C. and W. B., and their heirs, upon and for the trusts, intents, and purposes expressed, and declared, concerning the same, in and by the said will of the said L. O. deceased, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due, and of right accustomed, and so (saving the right of the lord), the said T. C. and W. B. are admitted tenants thereof, *in manner and form aforesaid*, and pay to the lord for a fine on such their admittance, the sum of £ — — —, of the lord's favor (84), and their fealties are respited.

(Presentment of the death of M. R., first proclamation; presentment of her will, and admittance of A. B. the devisee for life.)

(e. 1). At this court the homage present the death of

(84) I have here supposed the fine to be arbitrary.—To prevent its being considered a fine certain, the amount should be varied from that which was paid by L. O. on his admittance, *Ante*, pt. 1, pa. 388. And the admittance being of two

persons as joint-tenants, the lord would seem to be intitled to a larger fine, than he could have claimed, if there had been only one trustee, *Ante*, pt. 1, pa. 375 &c.

M. R. widow, late one of the customary tenants of this manor, and thereupon proclamation is made for any person or persons, claiming title to the customary or copyhold hereditaments, lying within and holden of this manor, whereof the said **M. R.** died seized, to come into court and be admitted.

(e. 2). And afterwards at this court the homage present, that the said **M. R.** in and by her last will and testament in writing, bearing date &c. (the probate whereof is produced in court), gave and devised all, &c. lying within and holden of this manor, unto **A. B.** and his assigns, for the term of his life, with such remainders over, as in the same will are expressed.

(e. 3). Now at this court comes the said **A. B.**, and humbly prays to be admitted tenant to the customary or copyhold hereditaments, lying within and holden of this manor, so devised to him for his life as aforesaid, and with such remainders over as in the said will of the said **M. R.** deceased, are mentioned, to wit, to All, &c. with the appurtenances, and to which same premises the said **M. R.** was admitted at the last general court, holden for this manor, *To which* said **A. B.** the lord of this manor, by the said steward, grants seizin thereof by the rod, *To have and to hold* the said ——— hereditaments and premises, with their appurtenances, unto the said **A. B.** and his assigns, for the term of his life, and with such remainders over, as in the said will of the said **M. R.** are expressed, and according to the purport and true meaning of the same will, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due, and of right accustomed, and so (saving the right of the lord), the said **A. B.** is admitted tenant thereof in manner aforesaid, and pays to the lord for a fine on

such his admittance, the sum of £ — — —, (85) of the lord's favor, and his fealty is reaped.

(Presentment of the death of R. T., first proclamation; presentment of his will, and admittance of his devisees in trust, leading to an equitable recovery.)

(f. 1). At this court the homage present the death of R. T. late one of the customary tenants of this manor, and thereupon proclamation is made for any person or persons, claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof the said R. T. died seized, to come into court and be admitted.

(f. 2). And afterwards at this court, the homage present that the said R. T. by his last will and testament, in writing, bearing date &c. and now produced in court, gave and devised all, &c. within and holden of this manor, unto A. B. and C. D. and their heirs, in trust to pay the rents and profits thereof, to E. F. and his assigns, for his life, and after his decease, in trust for F. F. (only son of the said E. F.) and the heirs of his body, and for default of such issue, upon the further trusts in the same will mentioned. And they also present that the said E. F. departed this life in the lifetime of the said testator, R. T.

(f. 3). Now at this court come the said A. B. and C. D., &c. [here to follow the admittance of the trustees upon the trusts of the will of R. T., see admittance at this court, d. 3.]

(85) As the admittance of a tenant for life, is the admittance of all in remainder, the fine is to be assessed accordingly, *Ante*, pt. 1. pa. 353, 391.

(Admittance of F. F. as equitable tenant in tail, under the will of R. T., and a recovery afterwards suffered by him.)

(g. 1). At this court comes F. F. of &c. the only son of E. F., late of &c. deceased, and prays to be admitted tenant in tail general, equitably, under and by virtue of the limitations and trusts contained in the will of R. T. late one of the customary tenants of this manor, (which will hath been presented and inrolled at this same court,) to all and singular the customary or copyhold hereditaments, lying within and holden of this manor, and devised by the said will of the said R. T., for the purpose of suffering an equitable recovery thereof, in such manner as is hereinafter mentioned, to wit, to All, &c. with the appurtenances, to which same premises the said R. T. was admitted, at a court holden for this manor, on the — day of —, *To which* said F. F. the lord of this manor, by the said steward, grants seizin thereof by the rod, *To have and to hold* the said — hereditaments and premises, with the appurtenances, unto the said F. F. and the heirs of his body lawfully issuing, according to the limitations and trusts expressed in the said will of the said R. T. deceased, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due, and of right accustomed, and so (saving the right of the lord), the said F. F. is admitted equitable tenant thereof in manner aforesaid, but he pays no fine to the lord, this admittance being only had for further assurance.

(g. 2). And afterwards at this same court the said F. F. in open court surrenders, &c. [*the surrender to a tenant*

to the plaint, and all other proceedings, will be the same as on a legal recovery, ante, p. 47. &c.]

(Admittance of B. B. an infant, as heir of A. B., and appointment of guardian.)

(h. 1). At this court, after the first proclamation having been made at the last general court held for this manor, for any person or persons claiming title to the customary or copyhold hereditaments, lying within and holden of this manor, whereof A. B. then lately died seized, to come into court and be admitted, comes B. B. an infant of the age of — years or thereabouts, eldest son and heir, according to the custom of this manor, of the said A. B. deceased, and humbly prays to be admitted tenant to the said hereditaments, to wit, to All, &c. with the appurtenances, *To whom, &c.* [admittance to follow in the ordinary form: and then an appointment of guardian (if such be the custom of the manor), (86) thus:]

(h. 2). And because of the infancy of the said B. B., the lord of this manor, by the said steward, doth grant and commit the wardship of the customary or copyhold — hereditaments and premises, to which the said B. B. hath been so admitted as aforesaid, unto C. D. his next of kin, to whom the same hereditaments and premises cannot descend, until the said B. B. shall attain his full age, according to the custom of this manor, he the said C. D. answering such services as are or ought to be performed by him, as such guardian as aforesaid, according to the custom of this manor, and rendering a full and just account when thereunto required.

(Revocation of a guardianship assigned by the lord.)

(i). Because the aforesaid C. D. did not perform the

conditions on which the said custody was granted as aforesaid, but contrary to the trust reposed in him, the said C. D. (the infant) and his customary lands ill-treated; and abused his power in that behalf committed:—Wherefore the custody or wardship of the said infant, and of his customary or copyhold tenements, heretofore committed to the said C. D. as aforesaid, is accordingly by the lord of this manor revoked, and to all intents and purposes utterly and absolutely annulled (87).

(Admittance of E. D. widow, to the tenements assigned to her for freebench.)

(k). At this court after a second proclamation made at the last general court held for this manor, for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof C. D. then lately died seized, to come into court and be admitted, comes E. D. the widow of the said C. D., and humbly prays to be admitted tenant for the term of her life, according to the custom of this manor, to the hereditaments hereinafter described, being such part of the customary or copyhold hereditaments, holden of this manor, and of which the said C. D. so died seized, as hath been set out for the customary dower of her the said E. D. by F. D. the eldest son and heir, according to the custom of this manor, of the said C. D. deceased (88), to wit, to All, &c. with the appurtenances, and to which same premises (together with other hereditaments) the said C. D. was admitted tenant at a general court held

(87) 2 Watk. on Cop. 108.

(88) Entry and admittance seem to be necessary, when the dower is, as here supposed, of a portion of the land, and not of a portion of

the interest in the land. *Ante*, pt. 1. pa. 91, 93, 356, &c. And see particularly *Chapman v. Sharpe*, 2 Show. 184.

for this manor, on the — day of —, to which said E. D. the lord of this manor by the said steward, grants seizin thereof by the rod, to have and to hold the said — hereditaments and premises, with the appurtenances, unto the said E. D. and her assigns for her life, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due, and of right accustomed, and so (saving the right of the lord), the said E. D. is admitted tenant in manner and form aforesaid, and pays to the lord for a fine on such her admittance, the sum of £ — —, of the lord's favor, and her fealty is respited.

[This form will also serve, with little variation, for the admittance of the husband; tenant by the curtesy of a portion only of the wife's land; see the references in n. (88), *sup.*]

(Admittance of F. D. as heir of C. D., subject to free-bench.)

(1.) At this court, after a second proclamation made at the last general court, held for this manor, for any person or persons claiming title to the customary or copyhold hereditaments, lying within and holden of this manor, whereof C. D. then lately died seized, to come into court and be admitted, comes F. D. the eldest son and heir, according to the custom of this manor, of the said C. D., and humbly prays to be admitted to the same hereditaments, as tenant in fee simple, according to the custom of this manor, subject to the customary dower, or free-bench of E. D. the widow of the said C. D., and to which she hath been admitted at this same court, to wit, to All, &c. with the appurtenances, to which said F. D. the lord of this manor, by the said steward, grants seizin

thereof by the rod, *to have and to hold* the said customary or copyhold ——— hereditaments and premises, with their appurtenances, unto the said F. D. and his heirs, (subject nevertheless to such customary widow's estate, dower or free-bench, as aforesaid,) to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, &c. and so (saving the right of the lord), the said F. D. is admitted tenant thereof, in manner and form aforesaid, and pays to the lord for a fine on such his admittance, the sum of £ — — —, of the lord's favor, and his fealty is respited.

(Surrender and release of free-bench, by J. H. widow of G. H. to L. H. the customary heir.)

(m). At this court comes J. H. widow of G. H., late one of the customary tenants of this manor, and in consideration of the natural love and affection which she hath and beareth for L. H. eldest son of the said G. H. deceased, by her the said J. H., in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, and doth also remise, release, and for ever quit claim, all the customary dower, widow's estate, or free-bench, right, title, and interest whatsoever, of her the said J. H. in, to, or out of All, &c. to which same premises the said L. H. was admitted as the customary heir of the said G. H., (subject to the said dower, widow's estate, or free-bench of her the said J. H. (89), at a general court held for this manor, on the — day of ———, To the use and behoof of the said L. H. and his heirs, according to the custom of this manor, to the end and intent that the said L. H. and his heirs, may

(89) The wife is here supposed to be dowable of a portion only of the interest in the land, and her admittance therefore unnecessary. See the references in n. (88.) *sup.*

henceforth have, hold, possess, and enjoy all and singular the hereditaments and premises herein before described, freed and discharged of and from the customary dower, widow's estate, or free-bench offer the said J. H., in, to, or out of the same premises, or any part thereof, and of and from all actions, suits, claims, and demands, in respect thereof, or in any wise relating thereunto.

[This form will serve, with very little variation, for a release by the husband, of his estate by the customary curtesy, when admittance is unnecessary.]

(Surrender and release of equity of redemption, by A. B. to C. D., and his admittance.)

(a. 1). At this court comes A. B., one of the customary tenants of this manor, and in consideration of the sum of £———, to him in hand well and truly paid by C. D. of &c., in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, and doth also remise and release, All, &c. with the appurtenances, (which same hereditaments and premises were, at a general court holden for this manor, on the ____ day of _____, duly surrendered by the said A. B. to the use of the said C. D. and his heirs, subject to a condition for avoiding the said surrender, on payment to the said C. D., his executors, administrators, or assigns, of the sum of £———, and lawful interest for the same, at the time therein mentioned, and since past, and by virtue of which same conditional surrender, the sum of £——— is now due and owing to the said C. D. from the said A. B.). And the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, equity of redemption, benefit, property, claim, and demand whatsoever, of the said A. B. in, to, or out of the same premises, and every part thereof, to the use and behoof of

the said C. D., his heirs and assigns for ever, according to the custom of this manor.

(n. 2). Now at this court comes the said C. D., and humbly prays to be admitted tenant to the said customary or copyhold hereditaments and premises, so surrendered and released to his use, at this court as aforesaid, to whom &c. [*admittance of C. D. to follow in the usual form.*] (90).

(Surrender and release of right from G. G. and F. his wife, to H. H. the tenant.)

(o). At this court comes G. G. of &c. and F. G. his wife, she the said F. G. claiming to be entitled to the fee simple and inheritance, according to the custom of this manor, of and in the hereditaments hereinafter described, and in consideration of the sum of £ — — —, to them in hand well and truly paid by H. H., the present tenant of the same hereditaments, and the said F. G. being first examined by the said steward, separately and apart from her said husband, and freely and voluntarily consenting thereto (91), in open court, surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, and also do respectively remise and release, All, &c. with the appurtenances, to which same premises the said H. H. was admitted tenant, at a court holden for this manor, on the — day of —, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, trust, benefit, property, claim, and demand whatsoever, of the said G. G. and F. G. his wife, or either of them, in, to, or out of the same premises, and every part thereof, to the use and behoof of the said

(90) And as C. D. was not admitted on the conditional surrender, a fine would of course be payable upon this admittance. *Ante*, pt. 1, pa. 158, 371, 394.

(91) *Ante*, pt. 1, pa. 247.

H. H. his heirs and assigns for ever, according to the custom of this manor (92).

(Bailiff's return to precept of recognition in plaint of right patent, A. demandant, C. tenant; Trial and Verdict.)

At this court W. Y. the bailiff of this manor returns, that by virtue of the precept to him issued at the last general court, holden for this manor, he hath impanelled twelve good and lawful men, copyhold tenants of this manor, to appear and make recognition of the mise joined between C. and A. as by the said precept he was commanded, and which panel here followeth to wit.

E. F., foreman.	} sworn. {	R. S.
G. H.		T. V.
I. K.		W. Y.
L. M.		B. D.
N. O.		F. E.
P. Q.		H. G.

Who beingsworn to say the truth, whether the said C. hath more right to hold the tenements, which the said A. hath demanded against him by his customary writ of right, as he the said C. now holds the same, or the said A. to have them as he demandeth, and on no account to say but the truth; and having heard and impartially considered the evidence, as well on the behalf of the said C. the tenant, as of the said A. the demandant, have found their verdict for the said C. the tenant. Therefore it is considered by the court that the said C. do hold the tenements aforesaid, with the appurtenances, to him the said C. and his heirs for ever, according to the custom of this manor, quit of the said A. and his heirs for ever.

(92) An admittance would not pt. 1. pp. 217, 368, 402.
be necessary in this case, *Ante*,

[Should C. the tenant have made default at the last court, and be in attendance at this court, by D. his attorney, the entry may be:]

At this court W. Y. the bailiff of this manor returns that in pursuance of the precept to him issued at the last general court holden for this manor, he did take into the hands of the lord of this manor, by the view of R. S. and T. W., good and lawful men, copyhold tenants of this manor, the messuages, lands, tenements, and hereditaments, with the appurtenances, which A. in his plaint against C. at a general court holden for this manor, on the ____ day of _____, claims as his right and inheritance, according to the custom of this manor; and that in further pursuance of the aforesaid precept, he did duly summon the said C. to appear at this court, to answer to the said plaint, and why, &c. as he the said W. Y. was commanded.

And the said C. appearing at this court, by D. his attorney, lawfully constituted, the said A. comes and remits and releases to the aforesaid C. his default, which he made at the last general court, held on the ____ day of _____.

And afterwards the said A. in his own proper person demands, &c. *[Then will follow the count, plea, and mise, and award of precept of recognition, in the form given ante, p. 53.]*

[Should C. wish to imparl until the next court, the steward may thus enter an]

Imparlanee. And now at this court comes the said C. by the said D. his attorney, and prays leave to imparl to the count and declaration aforesaid, until the next court baron or customary court of the said A. Z. lord of this

manor, to be holden in and for the same manor, on the _____ day of _____ next; and he hath it, &c. — The same day is given to the said A. here, &c. (93).

Examined by me,

J. S. steward.

(Inrolment of a grant of lands escheated or forfeited) (94).

The manor of _____ } Be it remembered that on the
in the county of _____. } _____ day of _____, in the _____
year of &c. and in the year of our Lord _____, A. Z. lord
of this manor, of his special grace and favor did give and
grant seizin by the rod, according to the custom of this
manor, unto A. B. of &c. of All, &c. with their appurte-
nances, which same hereditaments and premises [*here
state whether the copyhold interest vested in the lord by
escheat or forfeiture, and by what means,*] to hold the
said _____ hereditaments and premises, with the appurte-
nances, unto the said A. B. and his heirs, to be holden of
the lord by copy of court roll, at the will of the lord, ac-
cording to the custom of this manor, by fealty, suit of
court, and the ancient annual rent or rents, and other du-
ties and services therefore due, and of right accustomed,
and so (saving the right of the lord), the said A. B. was ad-
mitted tenant thereof, and paid to the lord for a fine, on
such his admittance, the sum of £ — — —, of the lord's
favor, and his fealty was respited.

Examined by me,

J. S. steward.

(Judgment of seizin on default.)

(93) But if the tenant make default again at this court, and does not save his former default, the demandant will have judg-

ment of seizin, *Ante*, p. 19.

(94) Grants of this nature should be inrolled according to their dates, immediately previous to the entry of the then succeeding court.

(Inrolment of a licence to demise).

The manor of _____ } Be it remembered that on the
 in the county of _____. } ____ day of _____, in the year of
 our Lord _____, the lord of this manor did out of court give
 and grant to A. B., one of the customary tenants of this
 manor, full license, power, and authority, to demise and
 lease to any person or persons willing to take the same as
 lessee to the said A. B., but not by way of mortgage, and
 to the executors, administrators, and assigns of such
 person or persons, All, &c. with the appurtenances, to
 which same premises the said A. B. was admitted tenant,
 at a general court held for this manor on the ____ day of
 _____, to hold for any term or number of years not ex-
 ceeding ____ years, computed from the ____ day of _____,
 saving always to the lord of this manor, and to all and
 every the lord and lady, lords and ladies of this manor for
 the time being, all and all manner of fines, heriots, rents,
 customs, and services, therefore due and of right accus-
 tomed; and for the said license the said A. B. paid for a
 fine the sum of £ — — —, *according to the custom of*
this manor. [When the custom has not fixed the fine,
 the words in *italics* to be omitted.] (95).

Examined by me,

J. S. steward.

(Inrolment of a deed of enfranchisement.)

The manor of _____ } Be it remembered, that by an
 in the county of _____. } indenture bearing date, &c. and
 made between A. Z. of &c. (the lord of this manor) of
 the one part, and E. F. of &c. of the other part: after

(95) Any other licences (open- the then last general court, should
 rating as a dispensation of acts of be inrolled in like manner.
 forfeiture), granted subsequently to

reciting (among other things), the admittance of the said E. F. to the customary or copyhold hereditaments therein-after described, at a court holden for this manor on the ____ day of _____, to hold to him the said E. F. and his heirs, according to the custom of this manor: It is witnessed, that in consideration of the sum of £ — — —, of lawful money of Great Britain, paid to the said A. Z. by the said E. F., he the said A. Z. did grant, bargain, sell, alien, release, enfranchise, and confirm unto the said E. F. his heirs and assigns, All, &c. together with all ways, &c. and the reversion, &c. and all the estate, &c. to hold the said ____ hereditaments and premises with their appurtenances, unto and to the use of the said E. F. his heirs, and assigns for ever; freed and absolutely acquitted, exonerated, and for ever thereafter discharged of and from all manner of customary or copyhold tenures, fines, rents, heriots, fealties, suits, forfeitures, and all other customary payments, duties, services, and penalties whatsoever, which by or according to the custom of this manor, the said _____ hereditaments and premises thereby enfranchised, conveyed, and assured, or intended so to be, or any part thereof, was, were, or had been, or ought otherwise to be subject or liable to, or charged with, or which would otherwise be payable, or to be done and performed to the lord or lady, lords or ladies of this manor, for the time being, for or in respect of the same hereditaments and premises, or any part thereof, as copyhold holden of this manor.

Examined by me.

J. S. steward.

(Inrolment of a deed of enfranchisement, executed pursuant to a power in a marriage settlement.)

The manor of _____ } Be it remembered that by an
in the county of ____ } indenture bearing date, &c. and

made between B. B. and C. C. of the first part, A. Z., of &c. and D. his wife of the second part, and E. F., of &c. of the third part; reciting an indenture of release, bearing date &c. and made between &c. (being the settlement made previous to the marriage of the said A. Z. with the said D. his wife); and after also reciting (among other things), that at a court holden in and for this manor on the ____ day of _____, the customary or copyhold ____ hereditaments and premises thereafter described, were surrendered according to the custom of this manor, to the use of the said E. F., his heirs, and assigns for ever, and that at the same court the said E. F. was accordingly admitted tenant thereto, *to hold* the same to him the said E. F. and his heirs, according to the custom of this manor; It is witnessed, that in consideration of the sum of £____, of lawful money of Great Britain, paid by the said E. F. to the said B. B. and C. C., with the privity and approbation of the said A. Z., they the said B. B. and C. C., in pursuance and exercise of the power or authority in that behalf mentioned and contained in the said indenture of release and settlement, and with the consent and approbation of the said A. Z. and D. his wife, (testified as therein mentioned), did enfranchise, limit, and appoint, grant, bargain, sell, release, and confirm; and the said A. Z. for the nominal consideration therein mentioned, and according to his estate and interest, did enfranchise, grant, release, ratify, and confirm unto the said E. F. his heirs and assigns, All &c., with their appurtenances, and the reversion, &c. and all the estate &c.; *to hold* the said _____ hereditaments and premises, with their appurtenances, unto and to the use of the said E. F., his heirs, and assigns for ever, freed and absolutely acquitted, exonerated, and for ever thereafter discharged of and from all manner of customary or copyhold tenures, fines, rents, heriots, feal-

ties, suits, forfeitures, and all other customary payments, duties, services, and penalties whatsoever, which by or according to the custom of this manor, the said _____ hereditaments and premises thereby enfranchised, limited, and appointed, or otherwise assured, or intended so to be, or any part thereof, was, were, or had been, or ought otherwise to be subject or liable to, or charged with, or which would otherwise be payable or to be done and performed to the lord or lady, lords or ladies of this manor, for the time being, for or in respect of the same hereditaments and premises, or any part thereof, as copyhold holden of this manor.

Examined by me,

J. S. steward.

(Further Precedents of Court Rolls.)

[*Note.* In the succeeding court the copyholds are supposed to be held for lives, subject to a heriot on death, and renewable].

FOURTH COURT.

The manor of _____ } A general court baron of, &c.
in the county of _____ } [For this form see *ante*, p. 23.]

(Voluntary grant to A. B., a purchaser for three lives.)

(a.) At this court the lord of this manor by the said steward for and in consideration of the sum of £_____, in hand well and truly paid to the lord by A. B. of &c. doth grant seizin by the rod, according to the custom of this manor, unto the said A. B., of All, &c. with the ap-

purtenances; [if the lord's title to the tenement accrued by escheat or forfeiture, the particular facts should be stated here.] *To have and to hold* the said customary or copyhold hereditaments and premises, with the appurtenances, unto the said A. B., for the term of the lives of him the said A. B. now aged ____ years, or thereabouts, C. D. of &c. now aged ____ years, or thereabouts, and E. F. of &c. now aged ____ years, or thereabouts, and the life of the longest liver of them *successively*, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services, therefore due and of right accustomed; and so (saving the right of the lord), the said A. B. is admitted tenant thereof, in manner aforesaid, and his fealty is respited.

(Presentment of the death of A. B., (the 1st life,) and proclamation for the 2d life to take admittance).

(b.) (96) At this court the homage present, that A. B., who held for the term of his life, and the lives of C. D. and E. F., and the life of the longest liver of them successively, certain customary or copyhold hereditaments lying within this manor, departed this life since the last general court, whereupon there accrued due to the lord of this manor, a heriot of £____.

And afterwards, at this court, proclamation is made for the said C. D., the next life in succession, to come in and be admitted to the said hereditaments, so lately held by

(96) I have supposed here and paid a full fine on the original in c. 1. that A. B., C. D. and E. grant. (No copy necessary). F. were equal purchasers, and

the said A. B., but the said C. D. does not come, therefore let a second proclamation be made at the next court.

(*Admittance of C. D. (the 2d life); surrender by him and E. F. (the 3d life); and re-grant to G. H. a purchaser.*)

(c. 1). At this court comes C. D., the life nominated next in succession after the life of A. B., whose death was presented at the last general court, and humbly prays to be admitted tenant for the term of the life of the said C. D. and of E. F. (the remaining life named in the copy), and the life of the longest liver of them *successively*, to the customary or copyhold hereditaments lying within and holden of this manor, to which the said A. B. was admitted at a court held the ____ day of _____, to wit, to All, &c. with the appurtenances: *To which* said C. D., the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said customary or copyhold hereditaments and premises, with the appurtenances, unto the said C. D. and E. F. for the term of their lives and the life of the longest liver of them *successively*, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord), the said C. D. is admitted thereto, in manner and form aforesaid, and his fealty is respited.

(c. 2). And afterwards, at this court, come the said C. D. and E. F., and in consideration of the sum of £____, to them in hand well and truly paid by G. H., of &c. in open court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all

and singular the said customary or copyhold _____ hereditaments and premises, to which the said C. D. hath been so admitted tenant at this court as aforesaid; and all the estate and interest of the said C. D. and E. F. therein or thereto, *to the intent* that the lord may re-grant the same premises to the said G. H. for the term of the lives of the said C. D. and E. F. and the life of the longest liver of them, according to the custom of this manor; *to which* said G. H., the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said hereditaments and premises with the appurtenances, unto the said G. H. for the term of the lives of the said C. D. and E. F. and the life of the longest liver of them, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; And so (saving the right of the lord), the said G. H. is admitted tenant thereto, in manner and form aforesaid, and his fealty is respited.

(Surrender by the said G. H., and re-grant to him for three lives.)

(d). (97) At this court comes G. H., of &c. who holds the customary or copyhold hereditaments hereinafter described, for the term of the lives of C. D. and E. F. and the life of the longest liver of them, and in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All,

(97) I have here supposed that the lives and to add a third, and G. H. wishes to exchange both is the sole purchaser.

&c. with the appurtenances, and all the estate and interest of the said G. H. therein or thereto, *to the intent* that the lord may re-grant the same premises to the said G. H. for the term of the lives of the said G. H. now aged — years or thereabouts, I. K., of &c. now aged — years or thereabouts, and L. M., of &c. now aged — years or thereabouts, and the life of the longest liver of them, according to the custom of this manor; *to which* said G. H. the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said hereditaments and premises, with the appurtenances, unto the said G. H. for the term of the lives of the said G. H., I. K., and L. M., and the life of the longest liver of them *successively* (98), to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services, therefore due and of right accustomed; and so, (saving the right of the lord), the said G. H. is admitted tenant thereto in manner aforesaid, and pays to the lord for a fine, on such his admittance, the sum of £ — — — (99), and his fealty is respited.

(Admittance of the 2d life in succession; and surrender by him and the 3d life, in order to fill up the copy.)

(e. 1.) (100). At this court comes C. D., the life next in succession after the decease of A. B., whose death hath

(98) Although the custom should fix the estate in the lives in succession, yet L. K. and L. M. would be trustees for G. H. *Ante*, pt. 1. pa. 465, &c.

(99) The certainty of the fine is essential to the tenant-right of renewal, *Ante*, pt. 1. pa. 410, 374.

(100) I have supposed here that

been presented at this court, and humbly prays to be admitted tenant in possession to all and singular the customary or copyhold hereditaments, lying within and holden of this manor, to which the said A. B. was admitted at a court held the — day of —, to wit, to All, &c. with the appurtenances, *to which* said C. D., the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said hereditaments and premises, with the appurtenances, unto the said C. D. for the term of his life and the life of E. F. (the third life named in the copy), and the life of the longest liver of them *successively*, to be holden of the lord by copy of court roll at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord), the said C. D. is admitted thereto in manner and form aforesaid, and his fealty is respited.

(e. 2). And afterwards at this court come the said C. D. and E. F., and in open court surrender into the hands of the lord of this manor by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all and singular the said customary or copyhold hereditaments and premises, to which the said C. D. hath been admitted tenant at this court as aforesaid, with the appurtenances, and all the estate and interest of the said C. D. and E. F. respectively therein or thereto, *to the intent* that the lord may re-grant the same premises to the said C. D. to hold for the term of the lives of the said C. D. and E. F. and G. H. of &c. and the life of the

A. B. was the sole purchaser, and . . . vice or personal representative.
 paid the full fine; and that the re- . . . Ante, pt. 1. pa. 465.
 newal fine was paid by his de-

longest liver of them *successively*, according to the custom of this manor: *to which* said C. D., the lord of this manor by the said steward grants seizin thereof by the rod; *to have and to hold* all and singular the said customary or copyhold hereditaments and premises, with the appurtenances, unto the said C. D., E. F., and G. H., for their lives, and the life of the longest liver of them *successively*, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed: And so (saving the right of the lord), the said C. D. is admitted tenant thereto, in manner and form aforesaid, and pays to the lord for a fine, on such his admittance, the sum of £ — — —, and his fealty is respited.

(Surrender by A. B. (the 1st life) on the death of C. D. (a 2d or 3d life), and in order to fill up the copy; and re-grant to A. B. for three lives.) (101)

(f.) At this court comes A. B., who at a court holden for this manor, on the — day of —, was admitted to the customary or copyhold hereditaments hereinafter described, for the lives of him the said A. B., C. D. of &c. (whose death hath been presented at this same court), and E. F. of &c., and the life of the longest liver of them *successively*, and in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom

(101) I have here, and in (g), presumed that A. B. was the sole purchaser, and that the first life may, by the custom, surrender to the lord and destroy the estates in remainder. *Ante*, pt. 1. pa. 34, 138.

of this manor, All, &c. with the appurtenances; and all the estate and interest whatsoever of him the said A. B. therein or thereto, *to the intent* that the lord may re-grant the same premises to the said A. B., to hold for the term of the lives of the said A. B. and E. F., and G. H., of &c. (now of the age of — years or thereabouts), and the life of the longest liver of them *successively*, according to the custom of this manor: *to which* said A. B., the lord of this manor, by the said steward, grants seizin thereof by the rod; *to have and to hold* all and singular the said customary or copyhold hereditaments and premises, with the appurtenances, unto the said A. B., E. F., and G. H., for their lives and the life of the longest liver of them *successively*, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed: And so (saving the right of the lord), the said A. B. is admitted tenant thereto, in manner and form aforesaid, and pays to the lord for a fine, on such his admittance, the sum of £———, and his fealty is respited.

(Surrender by A.B. (the 1st life), in order to exchange a life).

(g). At this court comes A. B., who, at a court holden for this manor on the — day of —, was admitted to the customary or copyhold hereditaments hereinafter described, for the lives of him the said A. B., C. D. of &c., and E. F. of &c., and the life of the longest liver of them *successively*, and in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c., with the appurtenances; and all the

estate and interest whatsoever of him the said A. B. therein or thereto, *to the intent* that the lord may regrant the same premises to the said A. B., to hold for the term of the lives of the said A. B. and C. D. and G. H. of &c. (now of the age of — years, or thereabouts), and the life of the longest liver of them *successively*, according to the custom of this manor; *to which* said A. B., the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* all and singular the said customary or copyhold hereditaments and premises, with the appurtenances, unto the said A. B., C. D., and G. H., for their lives, and the life of the longest liver of them *successively*, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord), the said A. B. is admitted tenant thereto, in manner and form aforesaid, and pays to the lord for a fine, on such his admittance, the sum of £— — —, and his fealty is respited.

(Reversionary grant for three lives.) (102).

(h). At this court comes A. H., the only child of G. H. of &c. and which said G. H. holds the customary or copyhold hereditaments hereinafter described, for the term of the lives of him the said G. H., I. K., of, &c. and L. M., of, &c. and the life of the longest liver of them, and in open court takes of the lord of this manor, by the

(102) In the absence of any special custom, a grant in reversion operates as an admittance. *Roe and Loveless*. 2 Barn. and Ald. 453. *Ante*. pt. 1, pa. 366, 535.

said steward, by the rod, according to the custom of this manor (103); The reversion of All &c. with the appurtenances, *to hold* the same unto the said A. H., now aged — years or thereabouts, for the term of his life, and for the lives of A. B., now aged — years or thereabouts, and C. D., now aged — years or thereabouts, and the life of the longest liver of them *successively*, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord), the said A. H. is acknowledged to have taken such reversionary estate as aforesaid, and to have paid, as a fine for the same, the sum of £— —, and his fealty is respited until, &c.

(Surrender by G. H. and re-grant to N. O., a mortgagee, and his admittance.)

(i). At this court comes G. H. who holds the customary or copyhold hereditaments hereinafter described, for the term of the lives of the said G. H., I. K., of &c., and L. M., of &c., and the life of the longest liver of them *successively*, and in consideration of the sum of £— —, to him the said G. H. in hand well and truly paid, by N. O. of &c., in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All, &c. with the appurtenances, and all the

(103) Grants of this nature are not common, but may exist by special custom. *Ante*, pt. 1, pa. 410, 412; and see *ib.* pa. 112, 113. I have heard of such a cus-

tom in prebendal manors usually granted out to lessees for a term of years, and where the copyholders have not a tenant-right of renewal.

estate and interest of the said G. H. therein or thereto, to the intent that the lord may re-grant the same premises to the said N. O., his executors, administrators, and assigns, for the term of the life of the said G. H., according to the custom of this manor, subject nevertheless to and upon this express condition, that if the said G. H., his heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid unto the said N. O., his executors, administrators, or assigns, the sum of £ — — —, of lawful money of Great Britain, on the — day of —, with interest for the same, after the rate of 5*l.* per cent. per annum, computed from the date of this surrender, clear of all taxes and deductions whatsoever, (and being the same principal and interest monies as are mentioned to be secured by the bond of the said G. H. to the said N. O., bearing even date herewith): Then the said N. O., his executors, administrators, or assigns, shall forthwith, at the costs and charges of the said G. H., re-surrender the said hereditaments and premises into the hands of the lord, to the intent that he will re-grant the same to the said G. H. for the term of his life; to which said N. O. the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said customary or copyhold hereditaments and premises, with the appurtenances, unto the said N. O., his executors, administrators, and assigns, for the term of the life of the said G. H., subject nevertheless to and upon the express condition aforesaid, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord), the said N. O. is admitted tenant hereto, in manner and form aforesaid, and pays to the

lord for a fine, on such his admittance, the sum of £———, and his fealty is respited (104).

(Conditional surrender by way of mortgage, from A. B. (a copyholder for three lives) to G. H., and his admittance.) (105).

(k). At this court comes A. B., who holds the customary or copyhold hereditaments hereinafter described, for the term of the lives of him the said A. B., C. D. of &c., and E. F. of, &c. and the life of the longest liver of them *successively*, and in consideration of the sum of £———, of lawful money &c., to the said A. B. in hand well and truly paid by G. H. of &c., in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All, &c. with the appurtenances to the same premises belonging, or in anywise appertaining, *to the intent* that the lord may regrant the same premises to the said G. H., his executors,

(104) In this surrender I have presumed that G. H., L. K., and L. M., were equal purchasers, so that G. H. could not give a security beyond his own life.

As the surrender to the lord operates as a merger of the copyhold interest, I submit that the mortgagee should always be admitted, when the mortgage is of a copyhold for lives, and the legal interest is made the subject of transfer:—it is true that the lord would be intitled to a heriot on the death of the mortgagee, *ante*, pt. 1, pa. 433, but it is the same in mortgages of heriotable copy-

holds of inheritance, when the surrenderee is admitted.

And as the whole interest passes out of the copyholder, and vests in the lord in a mortgage of copyholds for lives, I would also submit, that a release of the equity of redemption, is more properly the subject of a common law assurance, than of a surrender in the court of the lord.

(105) I have here presumed that A. B. was the sole purchaser, and by the custom, as the first *cestui que vie*, could destroy the whole estate created by the copy. *Ante*, n. 101.

administrators, and assigns, for the term of the natural lives of the said A. B., C. D., and E. F., and the life of the longest liver of them *successively*, according to the custom of this manor, upon this condition nevertheless, that if the said A. B., his heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, unto the said G. H., his executors, administrators, or assigns, the full sum of £ — — —, of lawful money aforesaid, with interest for the same, after the rate of 5l. per cent. per annum, computed from the date of this surrender, clear of all taxes and deductions whatsoever, (and being the same principal and interest monies as are mentioned to be secured by the bond of the said A. B., to the said G. H., bearing even date herewith); then the said G. H., his executors, administrators, or assigns, shall forthwith, at the costs and charges of the said A. B., his executors, administrators, or assigns, re-surrender the said hereditaments and premises, with the appurtenances, into the hands of the lord of this manor, to the intent that he will re-grant the same premises to the said A. B., C. D., and E. F., for the term of their lives, and the life of the longest liver of them *successively: to which* said G. H. the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said customary or copyhold hereditaments and premises, with the appurtenances, unto the said G. H., his executors and assigns, for the term of the natural lives of the said A. B., C. D., and E. F., and the life of the longest liver of them *successively*, subject nevertheless to and upon the express condition aforesaid, *to be holden* of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord), the said

G. H. is admitted tenant thereto, in manner and form aforesaid; and pays to the lord for a fine, on such his admittance, the sum of £ — — —, and his fealty is respited.

(Presentment of conditional surrender, by way of mortgage, from A. B. (a copyholder for three lives) to G. H.) (106).

At this court it is presented by the homage, that A. B., who holds the customary or copyhold hereditaments hereinafter described, for the term of the lives of him the said A. B., C. D., of &c., and E. F., of &c., and the life of the longest liver of them *successively*, on the — day of —, now last past, came before the said steward, and in consideration of the sum of £ — — —, of lawful money &c., paid to the said A. B. by G. H., of &c., did out of court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c. with the appurtenances to the same premises belonging or appertaining; and all the estate, right, title, and interest, of the said A. B. at law or in equity, in, to, or out of the same premises, and every part thereof, *to the use and behoof* of the said G. H., his executors, administrators, and assigns, for and during the natural lives of the said A. B., C. D., and E. F., and the life of the longest liver of them *successively*, according to the custom of this manor, subject nevertheless to and upon this express condition, that if the said A. B., his

(106) I have here presumed that A. B. was the sole purchaser, but had no power to destroy the legal estate of the other *cestui que vivit*; so that in case of the admittance of the mortgagee, he would have an equitable lien only on the estate, after the death of A. B.

heirs, executors, or administrators, did and should well and truly pay, or cause to be paid, unto the said G. H., his executors, administrators, or assigns, the sum of £ — — —, of lawful money aforesaid, on the — day of —, with interest for the same after the rate of 5*l.* per cent. per annum, computed from the date of the said surrender, clear of all taxes and deductions whatsoever, (and being the same principal and interest monies as are mentioned to be secured by the bond of the said A. B. to the said G. H., bearing even date therewith); then the said surrender was to be void, otherwise the same should remain in full force and virtue.

(Admittance of G. H. under a forfeited condition, in a surrender of copyholds for lives.) (107).

(*m. 1*). At this court it is found and presented by the homage, that default was made in payment of the principal sum of £ — — —, secured to R. S., of &c., by a conditional surrender from L. M., of &c., of certain customary or copyhold hereditaments, lying within and holden of this manor, and held by the said L. M. for the natural lives of him the said L. M., B. B., of &c., and C. C., of &c., and the life of the longest liver of them successively, which same surrender was presented and inrolled at the last general court held for this manor; and by which default the condition of the said surrender hath become forfeited.

(*m. 2*). And at this court comes the said R. S., and humbly prays to be admitted tenant to the customary or copyhold hereditaments lying within and holden of this manor, so surrendered to his use as aforesaid, to wit, to All, &c., with the appurtenances, to whom the lord of

(107) This form is framed on a condition, in a surrender similar to the last.

this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said customary or copyhold — — hereditaments and premises, with the appurtenances, unto the said R. S., his executors, administrators, and assigns, for and during the natural lives of the said L. M., B. B., and C. C., and the life of the longest liver of them *successively*, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord, and of any person having an equity of redemption in the premises), the said R. S. is admitted tenant thereto, in manner and form aforesaid, and pays to the lord for a fine on such his admittance, the sum of £ — — —, and his fealty is respited.

(Presentment of warrant to enter satisfaction on conditional surrender of copyholds for lives; Resurrender to mortgagor, and his re-admittance.)

(n. 1). At this court the homage present a certain warrant under the hand of C. D. of &c., bearing date the — day of —, whereby the said C. D. did acknowledge to have received of and from A. B. of &c., all principal and interest monies secured and made payable under and by virtue of a conditional surrender of certain customary or copyhold hereditaments, lying within and holden of this manor, made by the said A. B. at a court held the — day of —, [or made out of court on &c., and inrolled at a general court held &c.] and therefore the said C. D. thereby authorised the steward of this manor to enter satisfaction for the same on the court rolls thereof: whereupon satisfaction is entered by the said steward accordingly.

(n. 2). (108) And afterwards at this same court comes the said C. D., and, in consideration of such payment and satisfaction as aforesaid, in open court, surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c. with the appurtenances, (to which same premises the said C. D. was admitted tenant, to hold to him, his executors, administrators, and assigns, for the lives of the said A. B., E. F. of &c., and G. H. of &c. and the life of the longest liver of them *successively*, by virtue of the said conditional surrender, at the said court held for this manor, on the ____ day of ____), and all the estate, right, and interest whatsoever, of the said C. D. therein or thereto; *to the intent* that the lord may re-grant the aforesaid customary or copyhold hereditaments and premises to the said A. B. for the term of the lives of the said A. B., E. F., and G. H., and the life of the longest liver of them *successively*, according to the custom of this manor; *to which* said A. B., the lord of this manor, by the said steward, grants seizin thereof by the rod; *to have and to hold* the said ____ here- ditaments and premises, with the appurtenances, unto the said A. B., for the lives of the said A. B., E. F., and G. H., and the life of the longest liver of them *successively*, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services, therefore due and of right ac-

(108) I have here presumed that A. B. was the sole purchaser, and by the custom (as the first *cestui que vie*) could destroy the whole estate. *Ante* (k).

The form of re-surrender will

be very similar, where the mortgagor (a sole purchaser) has no power, by the custom, to destroy the legal estate of the other *cestui que vies*. See *ante*, n. 106.

customed, and so (saving the right of the lord), the said A. B. is admitted thereto, in manner and form aforesaid, and pays to the lord, for a fine on such his admittance, the sum of £ — — —, and his fealty is respited.

(Surrender by A. B. (a copyholder for three lives), to the use of a purchaser, for the same lives; and his admittance).

(o). (109) At this court comes A. B., who, at a court holden for this manor, on the — day of —, was admitted to the customary or copyhold hereditaments hereinafter described, to hold to him the said A. B., his executors and administrators, [or his heirs, as the custom may be,] for the lives of C. D., E. F., and¹ G. H., and the life of the longest liver of them (110), and, in consideration of the sum of £ — — —, of lawful money &c. to him in hand well and truly paid by I. K., of &c., in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c., with the appurtenances; and all the estate, right, title, and interest whatsoever of the said A. B. in, to, or out of the same premises, to the use and behoof of the said I. K., his executors, and administrators, [or his heirs, as the custom may be,] for and during the lives of the said C. D., E. F., and G. H., and

(109) I have here presumed that A. B. was the sole purchaser, and that a grant for lives in *succession* is not customary in the particular manor.

Note. A grant by copy for the lives of others, will not give an estate to the *cestui que vici*,

without a custom. *Ante*, pt. 1. pa. 119.

(110) Under the form of A. B.'s admittance, his executors or administrators, or heirs (as the case might be), would take as special occupants. *Ante*, pt. 1. pa. 61-2, 106. There can be no general occupant of copyholds. *Ibid.*

the life of the longest liver of them, according to the custom of this manor:—*to which* said I. K. (being present here in court), the lord of this manor, by the said steward, grants seizin of the same premises by the rod, *to have and to hold* the said customary or copyhold —, hereditaments, and premises, with the appurtenances, unto the said I. K., his &c., for and during the lives of the said C. D., E. F., and G. H., and the life of the longest liver of them, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services, therefore due and of right accustomed: And so (saving the right of the lord), the said I. K. is admitted tenant thereof, in manner and form aforesaid, and pays to the lord for a fine on such his admittance, the sum of £———; and his fealty is respited.

(Admittance of a widow to her free-bench, in copyholds for lives). (111)

(p). At this court comes B. B. widow of A. B., whose death hath been presented at this court, and who held the customary or copyhold hereditaments hereinafter described, for the term of the lives of him the said A. B., C. D. of &c., and E. F. of &c., and the life of the longest liver of them *successively*, and humbly prays to be admitted tenant, according to the custom of this manor (112), for the term of her widow's estate, to the same heredita-

(111) *Ante*, pt. 1. pa. 87.

(112) But when a wife is intitled to the whole of the copyhold for her life, or widowhood, or other estate, admittance would

not seem to be necessary, except by special custom, her interest being a continuation of the possession of the husband. *Ante*, pt. 1. pp. 93, 356 7.

ments, to wit, to All, &c. with the appurtenances; *to which* said B. B. the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — hereditaments and premises, with the appurtenances, unto the said B. B. for the term of her widow's estate therein, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due, and of right accustomed; and so, saving the right of the lord, the said B. B. is admitted tenant thereof, in manner and form aforesaid, and pays to the lord for a fine on such her admittance, the sum of £ — —, and her fealty is respited.

(Surrender of a widow's estate, and grant for three lives.)

(q). At this court comes F. C. widow of A. C. deceased, and who claims to hold the customary or copyhold hereditaments hereinafter described, for the term of her widowhood, according to the custom of this manor, and in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c. with the appurtenances; and all the estate, right, and interest of the said F. C. therein or thereto, *to the intent* that the lord may re-grant the same premises to the said F. C. for the lives of herself, and her son and daughter, C. C. and H. C., and the life of the longest liver of them *successively* (113), according to the custom of this manor: *to*

(113) This surrender supposes that A. C. (the husband of F. C.), was the last life named in the former copy; and that his widow,

and their children (C. C. and H. C.) were purchasers for their lives successively.

which said F. C., the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said _____ hereditaments and premises, with the appurtenances, unto the said F. C., C. C., and H. C., for the term of their lives, and the life of the longest liver of them *successively*, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services, therefore due and of right accustomed, and so (saving the right of the lord), the said F. C. is admitted thereto, in manner and form aforesaid, and pays to the lord for a fine on such her admittance, the sum of £ — — —, and her fealty is respited.

(Surrender of copyhold for lives, to the lord as purchaser; and re-grant for one life, to a trustee for the lord.) (114)

(r). At this court comes B. H., one of the customary or copyhold tenants of this manor, and in consideration of the sum of £ — — —, to him in hand well and truly paid by the said A. Z., lord of this manor, in full and open court surrenders into the hands of the said lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, and also releases All, &c. (to which said customary or copyhold hereditaments and premises, with other hereditaments, the said B. H. was admitted to hold to him his executors, administrators, and assigns, for the lives of him the said B. H., E. F. of &c., and G. H. of

(114) I have here supposed, preferred acting on his right to that the custom authorised a grant put in a single life (*ante*, pt. 1. pa. 120), as his own trustee.

&c. and the life of the longest liver of them, at a court holden for this manor, on the ____ day of ____: And all the estate, right, title, interest, trust, possession, power, claim, and demand whatsoever, which the said B. H. now hath in, to, or out of the same premises, or any part thereof, to the use of the said A. Z., lord of this manor, to the end and intent that he may do therewith his will and pleasure.

(s). At this court the lord of this manor by his said steward, in consideration of the sum of 5*s.* to him in hand paid by C. D. of &c. doth grant seizin by the rod, according to the custom of this manor, unto the said C. D. of All, &c., being part and parcel of the customary or copyhold hereditaments heretofore granted to B. H. of &c. to hold by copy of court roll of this manor, for the lives of &c.; (and which said hereditaments and premises hereinbefore described, lately came into the hands of the said lord of this manor, by purchase of and from the said B. H.); *to have and to hold* the said hereditaments and premises with the appurtenances, unto the said C. D., for and during the term of his natural life, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, the annual rent of £ — — —, being an apportionment of the ancient annual rent of £ — — —, (115) and other the duties and services therefore due and of right accustomed, and so (saving the right of the lord), the said C. D. is admitted tenant thereof, in manner and form aforesaid, and his fealty is respited.

FORMS OF PRECEPTS, SUMMONSES, PLAINTS, &c.

(A.)

(Precept to the Bailiff to summon a General Court.)

The manor of — } To W. Y. bailiff of the court of
in the county of — } the said manor.

These are to require you to summon and give notice to the several and respective tenants of the said manor of —, personally to appear at a customary court baron, to be holden for A. Z., lord of the same manor, on —, the — day of —, at — o'clock in the forenoon, at the usual and accustomed place, being the —, then and there to do their respective suit and service, and pay their respective rents due to the lord of the manor of — aforesaid. And these are also further to require you to give notice of the said court, to all other persons in any wise concerned in the business thereof, in order that they may appear at the time and place above-mentioned, and for your so doing this shall be your sufficient warrant. Given under my hand and seal, this — day of —, in the year of our Lord —.

J. S. steward of the manor
of — aforesaid.

(B.)

(The Oath to be administered to the Homage.)

A. B. " You as FOREMAN of this homage, shall inquire, and true presentment make, of all such things as
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" shall be given to you in charge, and of all such other
 " matters as shall come to your knowledge, presentable
 " at this court, and this you shall do, without fear,
 " favor, affection, hatred, or malice, to the best of your
 " understanding, So help you God."

C. D., E. F., G. H., and I. K. (and so four at a time according to their seniority of tenantry.) " The like oath
 " which A. B., your foreman, hath taken on his part, you
 " and every of you, shall well and truly observe and
 " keep, on your respective parts, So help you God."

(C.)

(Precept to seize quousque, after three Proclamations.)

The manor of _____ } To W. Y. bailiff of the court of
 in the county of _____ } the said manor.

Whereas, public proclamation hath been made at three several general courts baron, holden for the said manor, on the _____ day of _____, the _____ day of _____, and the _____ day of _____, for any person, or persons, claiming title to the customary or copyhold lands and hereditaments, lying within and holden of the same manor, of which A. B. lately died seized, to come into court and be admitted thereto, and for as much as no one came to take up, and be admitted to the said lands and hereditaments; It is Commanded and Ordered that you W. Y. do seize, and you are hereby authorized and required to seize, into the hands of the lord of the said manor, all and singular the said customary or copyhold lands, and hereditaments, of which the said A. B. so died seized, *in the mean time, and until some person or persons, shall appear and make good his or their claim, to be admitted tenant thereto,* and you are forthwith to make your return to this pre-

cept. Given under my hand and seal, the — day of —, in the year of our Lord —.

J. S. steward of the manor of — aforesaid.

[If one only of several coheirs should neglect to claim admittance, that circumstance must be stated, and the warrant is to be confined to the undivided share of such defaulter.]

(The Bailiff's Return to be indorsed on the above Precept.)

By virtue of the within precept, I have seized the within mentioned lands and hereditaments, into the hands of the lord, as commanded by the same precept.

W. Y., bailiff.

September 29th, 1821.

[Precept to seize absolutely].

When by the custom of the manor, the estate is forfeited for non-appearance of the heir or devisee, after three proclamations, the bailiff is to be commanded to make an *absolute* seizure, for which the above form (C) will be proper, omitting the words in italics in that precept.

And when the forfeiture is for neglect of suit and service, after a personal summons, or for executing a feoffment, levying a fine, leasing without license, committing treason or felony, or the like, the precept should recite the act occasioning the forfeiture, and that the homage have upon their oaths presented, that he the said — [the tenant] by such, &c. hath forfeited all and singular his customary or copyhold lands, lying within and holden of the said manor, unto the lord of the same manor; and then conclude "It is therefore commanded and ordered,

“ that you W.Y. do seize, and you are hereby authorized
 “ and required to seize, the said lands and hereditaments,
 “ with the appurtenances, so forfeited as aforesaid, into
 “ the hands of the lord of the said manor, and that you
 “ answer to him the profits and esplees thereof. Given,
 “ &c.”

And the like return is to be made and indorsed by the
 bailiff, as on a seizure *quousque*.

(D.)

(*Precept to the Bailiff to seize, on suffering a
 Recovery.*)

Manor of ——— } To W. Y. bailiff of the court of
 in the county of — } the said manor.

Know you that at a court now holden in and for the
 said manor, C., by judgment of the same court, hath re-
 covered his seizin against B. of ——— messuages, —
 acres of land, — acres of meadow, and — acres of
 pasture, with the appurtenances within this manor, and
 the jurisdiction of this court, by default; therefore, I com-
 mand you, that without delay, you cause full seizin of
 the tenements aforesaid, with the appurtenances, to be
 delivered to the said C.; and that you forthwith make
 return of this precept. Given under my hand and seal,
 this — day of —, in the year of our Lord —.

J. S. steward of the said manor.

(*The Bailiff's Return to be indorsed.*)

I do hereby certify, that full seizin of the within-men-
 tioned tenements, with the appurtenances, hath been
 delivered by me to C.; as by the within written precept
 I was commanded. Witness my hand, this — day
 of —.

(E. 1.)

*(Precept to summon the Tenant to appear to the
Plaint, in a Customary Writ of Right.)*

Manor of ——— } To W. Y., bailiff of the court of
in the county of — } the said manor, greeting:—

Because A. complains against C. in a plea of land, in the manor aforesaid, and makes protestation to prosecute his plaint in the court of the said manor, in the nature of a writ of our lord the king, of right patent:—Therefore, I command you, that you summon, by good summoners, the said C., to be and appear at the next court baron or customary court, to be holden for the said manor, on —, the — day of —, at the usual and accustomed place, being &c. to answer to the said plaint, and have you there the summoners and this precept. Given at the court baron or customary court of the said manor, under my hand and seal, this — day of —, in the year, &c.

J. S. steward of the said manor.

(E. 2.)

(The Bailiff's Return to be indorsed.)

By virtue of the within precept to me directed, I have summoned by good summoners, to wit, S. R. and W. T., good and lawful men, copyhold tenants of the manor of —, the within named C., that he be at the place and time within mentioned, to answer the plaint of the within named A., as by the same precept I was commanded.

Summoners of the } S. R.
within named C. } W. T.
W. Y. bailiff.

(E. 3.)

(Second Precept on default of the Tenant's appearance.

Manor of _____ } To W. Y., bailiff of the court of
in the county of — } the said manor, greeting:—

Because C., after being duly summoned, appears not at a court holden this day for the said manor, to answer to the plaint of A., in a plea of land, in the manor aforesaid, to wit, — messuages, — tofts, — barns, — out-houses, — orchards, — gardens, — acres of land, — acres of meadow, and — acres of pasture, with the appurtenances, which the said A. claims as his right and inheritance, according to the custom of the said manor; therefore I command you to take into the hands of the lord of the said manor, by the view of good and lawful men, copyhold tenants of the same manor, the aforesaid tenements, hereditaments, and premises, with the appurtenances, and the same taking, and the day thereof, make known to me; and that you summon, by good summoners, the said C., to be and appear at the next court baron or customary court of A. Z., lord of the said manor, to be holden for the said manor, on —, the — day of —, at the usual and accustomed place, being &c., to answer to the said plaint, and to shew wherefore he did not appear, &c.; and have you there the names of those by whose view you shall have done this, and the summoners, and this precept. Given at the court baron or customary court of the said manor, under my hand and seal, this — day of —, in the year, &c.

J. S. steward of the said manor.

[Bailiff's Return.]

By virtue of the within precept to me directed, I have, on the — day of —, in the year &c., by the view of R. S. and T. W., good and lawful men, copyhold te-

ants of the within mentioned manor, taken into the hands of the lord of the same manor, the within mentioned messuages, lands, tenements, and hereditaments, with the appurtenances; and I have also summoned, by good summoners, to wit, S. R. and W. T., good and lawful men, copyhold tenants of the aforesaid manor, the within named C., that he be at the place and time within mentioned, to answer the plaint of the within named A., as by the same precept I was commanded.

Summoners of the } S. R.
within named C. } W. T.
W. Y. bailiff.

(E. 4.)

(Precept to summon the Tenant, in Plaint of Customary Dower.)

Manor of ——— } To W. Y., bailiff of the court of the
in the county of— } said manor, greeting:—

Because A. B. of &c., who (as she alleges) was formerly the wife, and is now the widow of A. B. deceased, late one of the customary or copyhold tenants of the said manor, complains against E. D. gentleman, of a plea of land, to wit, of the third part of ——— messuages, &c., with the appurtenances, situate, lying, and being in the parish of ———, in the county of ———, within the said manor, and the jurisdiction of this court, of which said premises the said A. B. died seized, and to a third part whereof the said A. B. (as she alleges), is intitled for her life as her freebench, according to the custom of the said manor; therefore I command you that, according to the custom of the said manor, you summon the said C. D. by good summoners, to be and appear at the next court baron or customary court, to be holden for the said manor, on ———, the ——— day of ———, at the usual and accustomed place, being &c. to answer to the said plaint; and have you there the summoners and this precept.

Given at the court baron or customary court of the said manor, under my hand and seal, this ____ day of _____, in the year, &c.

J. S. steward of the said manor.

(F. 1.)

(Plaint in nature of an Assise of Novel Disseizin, and Prayer of Process.)

At this court comes A. of &c., in his own proper person, and complains against B., of &c., of a plea of land, to wit, of ____ messuages, ____ tofts, ____ barns, ____ out-houses, ____ orchards, ____ gardens, ____ acres of land, ____ acres of meadow, and ____ acres of pasture, with the appurtenances, situate and being in the parish of _____, in the county of _____, within this manor, and the jurisdiction of this court, and of which the said B., unjustly and without judgment, hath disseized the said A., within thirty years last past; And the said A. makes protestation to prosecute his suit, in form and nature of a writ of our said lord the king, of *Assise of Novel Disseizin*, at common law, according to the custom of this manor, and finds pledges to prosecute his suit afore-said in this court, to wit, *John Doe* and *Richard Roe*: And the said A. prays process thereupon, to be made to him against the said B., according to the custom of this manor. Therefore, according to the custom of this manor, a precept is awarded and issued to W. Y., bailiff of this manor, that, &c. [*Ante*, p. 37-8.]

[*At the next court the above Plaint may be continued thus.*]

At this court W. Y., bailiff of this manor, returns, that in pursuance of the precept to him issued at the last general court holden for this manor, he did duly summon B. to appear at this court, to answer to the plaint of A., entered at the last general court, as by the said precept he was commanded.

Count. And thereupon the said A., in his own proper person, demands against the said B., the tenements aforesaid, to wit, — messuages, &c. with their appurtenances, which the said A. claims to be the right and inheritance, according to the custom of this manor, of him the said A., and saith that he himself was seized of the tenements aforesaid, with the appurtenances, in his demesne, as of fee and right, by copy of court roll, at the will of the lord, according to the custom of this manor, in time of peace, in the time of our late Sovereign Lord, King George the Third, to wit, within 30 years last past, by taking the esplees thereof, to the value, &c.; and that such is his right, he offers, &c., and therefore prosecutes his plaint, &c.

(F. 2.)

(*Plaint in nature of an Assise of Mort d'Ancestor* (116); and *Prayer of Process.*) (117).

A. B. complains against C. D. and E., his wife, of a plea of land, to wit, of — messuages, — acres of land, &c. with the appurtenances in F. within this manor and the jurisdiction of this court, and makes protestation to prosecute his suit in form and nature of a writ of assise of *mort d'ancestor*, at common law: And the said A. B. prays process, according to the custom of this manor, to be directed to the bailiff of this court, commanding him, according to the custom of this manor, to summon, by good summoners, twelve good and lawful men of the homage of this manor, that they be before the lord or steward of this manor, at the next court to be held in and for this manor, to inquire upon their oaths whether B. B.,

(116) See F. N. B. 195.

Ante, pt. 1, pa. 550, n. 72. See

(117) It has been doubted whether such a plaint ever lay,

Mise joined on this form of plaint, *Post.* (G. 2).

father of the said A. B., on the day of his death, was seized in his demesne as of fee, by copy of court roll, at the will of the lord, according to the custom of this manor, of — messuages, and — acres of land, with the appurtenances, situate, &c. within the jurisdiction of this court; and if the said B. B. died within 50 years now last past; and if the aforesaid A. B. is next heir, according to the custom of this manor, to the said B. B., and in the mean time to view the lands and tenements (118), and to summon, by good summoners, the aforesaid C. D. and E., who now hold the said lands and tenements, and that they be there to hear the recognition; and the said A. B. finds pledges to prosecute his plaint aforesaid, to wit, *John Doe* and *Richard Roe*. And process is accordingly granted; and the same day is given to the said A. B.

(F. 3.)

(Plaint in nature of a Formedon in the Remainder, and Prayer of Process.)

A. B. complains against C. D. of a plea of land, to wit, of — messuages, and — acres of land, &c. with the appurtenances, in E., within this manor, and the jurisdiction of this court, and makes protestation to prosecute his suit in form and nature of a writ of *formedon* in the remainder, at common law, according to the custom of this manor; and finds pledges to prosecute his suit aforesaid, to wit, *John Doe* and *Richard Roe*. And the said A. B. prays process thereupon to be made to him against the said C. D., according to the custom of this manor.

Therefore, according to the custom of this manor, a precept is awarded and issued to W. Y., bailiff of this manor, that &c. [*Aate*, p. 37-8].

(118) The view should be by seven at least of the homage. Booth, 212.

[At the next court the plaint may be continued thus:]

At this court came as well the said A. B. as the said C. D., by F. G., his attorney, and the said W. Y., bailiff of this manor, returns, that he, by virtue of the precept to him directed in that behalf, hath summoned the aforesaid C. D. by good summoners, to wit, H. I. and K. L., to be at this court to answer the said A. B. in his plea aforesaid, as by the said precept he was commanded.

Count. And thereupon the said A. B. demands against the said C. D. the tenements aforesaid, with their appurtenances, as his right and inheritance, and saith that B. B. was seized of the tenements aforesaid, with their appurtenances, in his demesne as of fee and right, by copy of court roll, at the will of the lord, according to the custom of this manor, in time of peace, in the time of our late sovereign Lord King George the Third, by taking the esplees thereof to the value, &c., and being so seized, did, at a general court held for this manor, on the ____ day of __, &c., surrender into the hands of the lord of this manor, according to the custom of this manor, the tenements aforesaid, with their appurtenances, to the use and behoof of M., the then wife of the said B. B., to hold for the term of her life, and after the decease of the said M., to the use and behoof of C. B., (eldest son of D. B., brother of the said B. B.), and the heirs of his body lawfully begotten, and in default of such issue of the said C. B., to the use and behoof of F. B., (youngest son of the aforesaid D. B.,) to hold to him and the heirs of his body lawfully begotten, and in default of such issue, to the use and behoof of the right heirs of the said B. B. for ever; by virtue of which surrender the aforesaid M. was seized of the tenements aforesaid, with their appurtenances, in her demesne as of free tenements, at the will of the lord, according to the custom of this manor, in time of peace, in the reign of &c.,

by taking the profits or esplees thereof to the value, &c., and that the right came by virtue of the surrender aforesaid, to the said C. B., after the death of the said M., by which the said C. B. was seized of the tenements aforesaid, with their appurtenances, in his demesne as of fee-tail, at the will of the lord, according to the custom of this manor, in time of peace, in the reign &c., by taking the profits or esplees thereof to the value &c., and that from the said C. B., after the death of the said M. (the said C. B. dying without issue of his body lawfully begotten), the right cometh by virtue of the said surrender, according to the custom of this manor, to the said A. B., who now demandeth, to wit, as eldest son and heir of the body of the said F. B., youngest son of the said D. B.; and therefore the said A. B. brings this suit (119).

(119) This is the proper remedy for a remainder-man in tail; and the writ of entry *sur intrusion*, is thought by some, to be the only proper remedy for a reversioner in fee, or a remainder-man, in fee or for life, after a previous life estate, or the grantee or assignee of such reversioner or remainder-man. Booth, 181-2, F. N. B. 204, D. Finch, 266. Reg. 235. *Widdowson v. Earl of Harrington*, 1 Jacob & Walker, 532. But see *ib.* 554. Booth, 151. F. N. B. 217, D.

In the above recent case of *Widdowson v. the Earl of Harrington* (in which it was held, that in a writ of intrusion by a remainder-man or reversioner, after a life estate, the demandant must count upon an actual seizin by the per-

son creating the life estate, taking the esplees), the present Master of the Rolls was of opinion, that the 50 years allowed by 32 Hen. 8, c. 2, s. 2, for bringing the writ, was to be reckoned from that seizin, and not from the death of the tenant for life, or the commencement of the adverse possession. Sed Qu. And note, that in *Romilly v. James*, 1 Marsh, 599. (S. C. 6 Taunt. 265.) Gibbs, C. J., said, "Can it be law, that if the tenant for life live for 50 years, the remainder-man loses his remedy."

Note. It was doubted, in the above case of *Widdowson and Earl of Harrington*, whether the stat. of limitations of 21 Jac. 1, c. 16, did not extend to writs of entry.

(F. 4.)

(*Plaint in Customary Dower, and Prayer of Process.*)

At this court comes C. B., of &c., formerly the wife, and now the widow of A. B. deceased, late one of the customary or copyhold tenants of this manor, in her own proper person, and complains against E. D. gentleman, of a plea of land, to wit, of the third part of — mesuages, — barns, — stables, — cow-houses, — orchards, — gardens, — acres of land, — acres of meadow, and — acres of pasture, with the appurtenances, situate, lying, and being in the parish of —, in the county of —, within this manor, and the jurisdiction of this court, of which said premises the said A. B. died seized, holding the same by copy of court roll, at the will of the lord, according to the custom of this manor; and to a third part of which said premises the said C. B. is entitled for her life, as her free-bench, according to the custom of this manor: And the said C. B. makes protestation to prosecute her plaint in this court, in the form and nature of a writ of our said lord the king, of dower at common law, according to the custom of this manor, and finds pledges to prosecute her said plaint in this court, to wit, *John Doe* and *Richard Roe*; And the said C. B. prays process thereupon to be made to her against the said E. D., according to the custom of this manor.

Therefore, according to the custom of this manor, a precept is awarded and issued to W. Y., bailiff of this manor, that, &c. [*Ante*, p. 37-8.]

(F. 5.)

*(Plaint in nature of a Writ of Entry in the post;
and Prayer of Process.) [this will serve, with
little variation, for a Plaint in the per and cui.]*

At this court comes A. B., in his own proper person, and complains of C. D., of a plea of land, to wit, of _____ messuages, _____ cottages, _____ yards, _____ gardens, _____ out-houses, and _____ acres of land, with the appurtenances, in the parish of _____, within this manor and the jurisdiction of this court, and held of the lord of this manor, by copy of court roll, at the will of the lord, according to the custom of this manor; And the said A. B. makes protestation to prosecute his said plaint, in the nature of a writ of our lord the king, of entry *sur disseizin*, in the post, at common law, and saith, that the said tenements, with the appurtenances, are the right and inheritance, according to the custom of this manor, of him the said A. B., and into which the said C. D. hath not entry, unless after the disseizin which H. H. thereof unjustly and without judgment made, within 50 years now last past, to B. B., the father of the said A. B., and whose heir he is, according to the custom of this manor; And the said A. B. finds pledges to prosecute his plaint aforesaid in this court, to wit, *John Doe* and *Richard Roe*, and prays process thereupon to be made to him the said A. B., against the said C. D., according to the custom of this manor.

Therefore, according to the custom of this manor, a precept is awarded and issued to W. Y., bailiff of this manor, that &c. [*Ante*, p. 37-8].

(G. 1.)

(Form of General Mise.)

And at this court comes the said C. D., by E. F., his attorney, and denies the right of the said A. B., the demandant, and the seizin of B. B., from whom, &c. and the whole, &c., and chiefly of the tenements aforesaid, with the appurtenances, and he puts himself upon the homage, according to the custom of this manor, and prays that a recognition may be made, whether he the said C. D. hath a greater right to hold the tenements aforesaid, with the appurtenances, as he now holds the same, or the said A. B., the demandant, to hold the said tenements, with the appurtenances, as he hath demanded the same, &c.

And the said A. B. doth the like.

(G. 2.)

(Mise on Plaint of Assise of Mort D'Ancestor.)

And at this court come the said C. D. and E. his wife, in their own proper persons, and the said C. D., saith that the aforesaid B. B., father of the said A. B., was not, at the day of his death, seized in his demesne as of fee, by copy of court roll, at the will of the lord, according to the custom of this manor, of the tenements aforesaid, with the appurtenances, in manner and form as the said A. B. hath by his plaint alleged; and the said C. D. and E. pray that it may be enquired into by the homage, according to the custom of this manor.

And the said A. B. doth the like.

(F. 5.)

(Plaint in nature of a Writ of Entry in the post; and Prayer of Process.) [this will serve, with little variation, for a Plaint in the per and cui.]

At this court comes A. B., in his own proper person, and complains of C. D., of a plea of land, to wit, of _____ messuages, _____ cottages, _____ yards, _____ gardens, _____ out-houses, and _____ acres of land, with the appurtenances, in the parish of _____, within this manor and the jurisdiction of this court, and held of the lord of this manor, by copy of court roll, at the will of the lord, according to the custom of this manor; And the said A. B. makes protestation to prosecute his said plaint, in the nature of a writ of our lord the king, of entry *sur disseizin*, in the post, at common law, and saith, that the said tenements, with the appurtenances, are the right and inheritance, according to the custom of this manor, of him the said A. B., and into which the said C. D. hath not entry, unless after the disseizin which H. H. thereof unjustly and without judgment made, within 50 years now last past, to B. B., the father of the said A. B., and whose heir he is, according to the custom of this manor; And the said A. B. finds pledges to prosecute his plaint aforesaid in this court, to wit, *John Doe* and *Richard Roe*, and prays process thereupon to be made to him the said A. B., against the said C. D., according to the custom of this manor.

Therefore, according to the custom of this manor, a precept is awarded and issued to W. Y., bailiff of this manor, that &c. [*Ante*, p. 37-8].

(G. 1.)

(Form of General Mise.)

And at this court comes the said C. D., by E. F., his attorney, and denies the right of the said A. B., the demandant, and the seizin of B. B., from whom, &c. and the whole, &c., and chiefly of the tenements aforesaid, with the appurtenances, and he puts himself upon the homage, according to the custom of this manor, and prays that a recognition may be made, whether he the said C. D. hath a greater right to hold the tenements aforesaid, with the appurtenances, as he now holds the same, or the said A. B., the demandant, to hold the said tenements, with the appurtenances, as he hath demanded the same, &c.

And the said A. B. doth the like.

(G. 2.)

(Mise on Plaint of Assise of Mort D'Ancestor.)

And at this court come the said C. D. and E. his wife, in their own proper persons, and the said C. D., saith that the aforesaid B. B., father of the said A. B., was not, at the day of his death, seized in his demesne as of fee, by copy of court roll, at the will of the lord, according to the custom of this manor, of the tenements aforesaid, with the appurtenances, in manner and form as the said A. B. hath by his plaint alleged; and the said C. D. and E. pray that it may be enquired into by the homage, according to the custom of this manor.

And the said A. B. doth the like.

(G. 3.)

(Mise on plaint of Formedon in the remainder [denying the right of the settlor].)

And at this court the said C. D. comes and defends his right, when &c., and saith that the said B. B. [*the supposed settlor*] the late great uncle of the said A. B., was not seized of the said tenements and premises, with the appurtenances, in manner and form as the said A. B. by his plaint and declaration hath alleged: And of this he puts himself upon the homage, according to the custom of this manor.

And the said A. B. doth the like.

(H. 1.)

(Precept of Recognition in a Customary Writ of Right.)

Manor of _____ } To W. Y., bailiff of the court of
in the county of — } the said manor.

Because A. complains against C. in a plea of land, and makes protestation to prosecute his plaint in the court of the said manor, in the nature of a writ of our lord the king, of right patent: Therefore, I command you, that you forthwith summon, by good summoners, twelve good and lawful men, copyhold tenants of the said manor, that they be and appear at the customary court baron, to be holden for the said manor, on —, the — day of —, at the hour of — in the forenoon, at the usual and accustomed place, being, &c. [or, (when by consent of the parties, the question is to be tried immediately upon issue being joined), that they be before me at the court here now holden], ready by their oaths to make recognition, whether the said C. hath a greater right to hold — messuages, — tofts, — barns, — orchards, — gardens, — acres of land, — acres of meadow,

and ____ acres of pasture with the appurtenances; situate and being in the parish of _____, in the county aforesaid, within the jurisdiction of this court, as he now holds the same, or the said A., the demandant, to hold the same tenements, with the appurtenances, as he hath demanded the same: And have you there the summoners and this precept. Given under my hand and seal, this ____ day of ____, in the year of our Lord ____

J. S. steward of the said manor.

(H. 2.)

(Precept of Recognition in Plaint of Assise of Mort d'Ancestor.)

The manor of ____ } To W. Y., bailiff of the court of
in the county of ____ } the said manor, greeting.

Because A. B. complains against C. D. and E. his wife, in a plea of land, in the manor aforesaid, and makes protestation to prosecute his plaint in the court of the said manor, in the nature of a writ of assise of *mort d'ancestor* at common law; Therefore I command you, that you forthwith summon, by good summoners, twelve good and lawful men, copyhold tenants of the said manor, that they be and appear at the customary court baron, to be holden for the said manor, on ____, the ____ day of ____, at the hour of ____ in the forenoon, at the usual and accustomed place, being &c., ready by their oaths to make recognition, if B. B., father of the said A. B., on the day of his death, was seized in his demesne as of fee, by copy of court roll, at the will of the lord, according to the custom of the said manor, of ____ messuages, and ____ acres of land, with the appurtenances, situate &c., within the jurisdiction of this court; and if the said B. B. died within 50 years now last past; and if the said A. B. is next heir, according to the custom of the said manor, to the said

B. B.: And in the mean time let them view the aforesaid tenements. And do you summon, by good summoners, the said C. D. and E., who now hold the said tenements, that they be there to hear the recognition; and have you there the summoners and this precept. Given at the court baron or customary court of the said manor, under my hand and seal, this ____ day of ____, in the year of our Lord ____.

J. S. steward of the said manor.

(The Summons to be served on the Jurors pursuant to the above Precept of Recognition.)

Manor of _____ }
in the county of ____ } To _____

You are hereby required to appear in your proper person, at the general customary court baron of A. Z., lord of the manor of _____ aforesaid, on _____, the ____ day of ____, by ____ of the clock in the forenoon of the same day, to testify the truth according to your knowledge, in a certain plaint depending in the same court, between A. demandant, and C. tenant, of a plea of land; and hereof fail not, as you shall answer the contrary at your peril. Given under my hand, this ____ day of ____ 1821.

W. Y., bailiff.

(I.)

(The Juror's Oath, in a Customary Writ of Right.)

“ You shall say the truth, whether C. hath more mere
“ right to hold the tenements which A. demandeth against
“ him, by his plaint, in nature of a writ of right, or the
“ said A. to have them as he demandeth, and on no ac-
“ count to say but the truth: So help you God.”

(K.)

(Oath of the Witnesses.)

“ The evidence you shall give before this court, touching the matter whereon the mise is joined, between A. demandant, and C. tenant, shall be the truth, the whole truth, and nothing but the truth: So help you God.”

(L.)

Affeeror's Oath.

“ You and each of you shall well and truly afeer and affirm the several amercements here made, and now to you remembered; you shall spare no one through fear, favor, or affection, nor enhance any one from hatred or malice, but shall impartially act herein: So help you God.”

PRECEDENTS OF DEPUTATIONS, POWERS OF ATTORNEY, COPYHOLD ASSURANCES, &c.

(Appointment to the stewardship of a customary court baron.) (120)

Know all men by these presents, that I, A. Z., lord of the manor of —, in the county of —, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint J. S., of

&c., to be steward of the aforesaid manor of _____, and the members thereof, with full power and authority from time to time, to hold courts baren and customary courts for the same manor and its members, and to do all acts usual and customary to be done by stewards, in relation thereunto, accounting to me from time to time for such fines, heriots, reliefs, forfeitures, amercements, and other manorial profits, as shall be received by him or by his deputy or deputies; and I do hereby more especially authorise and empower the said J. S. from time to time, as there may be occasion, to make any voluntary grants of all or any customary or copyhold lands within the said manor, and to give and execute any licenses to demise or otherwise, as he the said J. S. shall deem expedient, and either in or out of court, as fully as I myself could or might do (121). And also to appoint any deputy steward or deputy stewards (122) of or for the said manor of _____, and its members, with full power to hold all or any such courts as aforesaid, or to do such other act or acts as he the said J. S. could or might do as chief steward of the same manor; and also to depute any person or persons to act under him as sub-deputy steward or stewards of the said manor, as occasion may require (123). And I do hereby ratify and confirm all and whatsoever the said J. S., or such his deputy or deputies, sub-deputy or sub-deputies shall lawfully do or cause to be done by virtue of these presents, hereby declaring that this appointment shall continue in force during my will and pleasure only. In witness whereof, I have hereunto set my hand and seal, this ____ day of _____, in the year of our Lord _____.

Sealed, &c.

(121) *Ante*, pt. 1. pp. 127, 525.

(123) *Ante*, pt. 1. pa. 133.

(122) *Ante*, pt. 1. pa. 132.

(A general appointment of an under-steward.)

Know all men by these presents, that I, J. S., steward of the manor of ———, in the county of ———, by virtue of the power or authority to me given in this behalf, by A. Z., lord of the said manor, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint A. B., of &c., to be my deputy steward of the aforesaid manor of ———, and the members thereof, with full power and authority from time to time, to hold courts baron and customary courts for the same manor and its members, and to do all such acts in the performance and execution of the duties of the said office as I myself could or might do, being personally present; and with liberty and authority to depute any person or persons to act under him as sub-deputy steward or stewards of the said manor, as occasion may require, he the said A. B. accounting to me from time to time for such fines, heriots, reliefs, amercements, and profits of court, and all fees and perquisites arising from the said office, upon being required thereunto; and I do hereby declare that this appointment shall continue in force during my will and pleasure. In witness, &c.

(Appointment of an under-steward to hold a special court.)

Know all men by these presents, that I, J. S., steward of the manor of ———, in the county of ———, by virtue of the power or authority to me given in this behalf, by A. Z., lord of the said manor, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint A. B., of &c., to be my deputy steward of the aforesaid manor of ———, and the members thereof, for the special purpose and turn only of

holding a customary court baron for the same manor, and then and there [*here state the particular object of the parties calling the court, for instance,*] (to accept and take a surrender from C. D., one of the customary tenants of the said manor, by the rod, of All &c., to the use of E. F., of &c., and his heirs, according to the custom of the said manor; and afterwards to admit the said E. F. tenant thereof accordingly, and to grant to him, the said E. F., a license to demise the same premises to any person or persons, for any term or number of years not exceeding twenty-one years, according to the usage of the said manor). And further, to do, execute, and perform all such acts, matters, and things, in and about the premises, as fully and effectually, to all intents and purposes, as I myself could or might do being personally present; the said A. B. duly accounting to me for such fines, fees, and perquisites of court, as shall be received by him, by virtue of this appointment, upon being thereunto required. In witness, &c.

(Deputation to take a surrender out of court from C. D., and his wife, of lands belonging to the wife.)

Know all men by these presents, that I, J. S., steward of the manor of _____, in the county of _____, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint A. B., of &c., my deputy steward of and for the said manor, for the special purpose and turn only of taking and accepting a certain surrender already prepared, and bearing even date herewith, from C. H., of &c., and D. his wife, by the rod, according to the custom of the said manor, of All &c., and to which same premises the said D. H. was admitted at a general court held for the said manor, on the _____ day of _____; and of all the estate and interest of the said C. H., and D. his wife, respectively, therein or thereto,

to the use and behoof of I. L., of &c., his heirs and assigns, for ever, according to the custom of the said manor, pursuant to a contract by the said C. H. and D. his wife, for the sale of the same premises to the said I. L. And I do hereby authorise and empower the said A. B., as my deputy steward, to examine the said D. H. separately and apart from her said husband, as to her free and voluntary consent to the said surrender, and generally to do and perform all acts, matters, and things for the purposes aforesaid, as fully and effectually, to all intents and purposes, as I myself could or might do, being personally present. And I do hereby agree to ratify and confirm all and whatsoever the said A. B. shall lawfully do, or cause to be done, by virtue of these presents. In witness, &c.

(Deputation to examine a feme covert, as to her consent to a power of attorney, for suffering a recovery.)
[See the act 47 Geo. 3. sess. 2. c. 8. post.]

Know all men by these presents, that I. J. S., steward of the manor of —, in the county of —, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint C. D., of &c., my deputy steward of and for the said manor, for the special purpose and turn only of examining E. B. the wife of A. B., of &c., separately and apart from her said husband, as to her free and voluntary consent to the signing, sealing, and delivering a certain power of attorney, already prepared and intended to be executed by the said A. B. and E. his wife, constituting and appointing E. F., of &c., their true and lawful attorney, to appear at the next or any subsequent general, or any special court baron, or customary court, to be held for the manor of — aforesaid, and to procure admittance of the said E. B., as tenant in tail general, according to the custom of the said manor, to all and singular the

customary or copyhold hereditaments in the said power of attorney particularly described, and therein stated to have been surrendered by B. B., deceased, the late father of the said E. B., pursuant to a covenant in that behalf contained in the settlement made on his marriage with M. G. spinster, bearing date the ____ day of _____, with their appurtenances, to the uses in the same settlement mentioned: And afterwards for the said A. B. and E. his wife, to surrender, or join with all proper and necessary parties in surrendering, the same premises, to the use of any person present at the same court, and his heirs, according to the custom of the said manor, to the intent to make such surrenderee tenant to the plaint, for the purpose of suffering a common recovery of the afore-said customary or copyhold hereditaments and premises, as therein mentioned: And also constituting and appointing G. H., of &c. (124), their true and lawful attorney, to appear for them respectively at such next or any subsequent general, or special court baron, or customary court, to be held for the said manor of _____, in a suit, in form and nature of a writ of entry *sur disseisin en le post*, at common law, and to enter into the usual warranty, and make voucher, and do all other lawful and necessary acts for the suffering and perfecting such common recovery; and also for them the said A. B. and E. his wife, together with the demandant, or recoveror, and tenant to the plaint in the said suit, and all other proper and necessary parties, to surrender all and singular the said hereditaments and premises, with their appurtenances, (the said demandant, or recoveror, and tenant being thereby directed by the said A. B. and E. his wife, to

•(124) The act of 47 Geo. 3. person from the attorney to surrender to a tenant to the plaint. seems to require, that the attorney to vouch, should be a distinct

Join in surrendering and releasing the same premises accordingly) to the use of the said A. B., his heirs and assigns for ever, according to the custom of the manor of ———, aforesaid: And I do further authorise and empower the said C. D. to do and execute the said office in my place and stead, as fully and effectually to all intents and purposes, as I myself could do, if personally present, hereby ratifying and confirming all and whatsoever my said deputy steward shall lawfully do, by virtue of these presents. In witness, &c.

(Deputation to examine a feme covert as to her consent to a power of attorney, under the above-mentioned act of 47 Geo. 3., leading to an equitable recovery.)

Know all men by these presents, that I, J. S., steward of the manor of ———, in the county of ———, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint A. B., of &c., my deputy steward of and for the said manor, for the special purpose and turn only of examining E. L., the wife of I. L., of &c., separately and apart from her said husband, as to her free and voluntary consent to the signing, sealing, and delivery of a certain power of attorney, already prepared and intended to be executed by the said I. L., and E. his wife, constituting and appointing C. D. of &c., their true and lawful attorney, to appear at the next, or any subsequent general, or at any special court baron, or customary court, to be held for the manor of ——— aforesaid, and to procure admittance of the said E. L. as tenant in tail general, equitably, according to the custom of the said manor, to all and singular the customary or copyhold hereditaments, in the said power of attorney particularly described, with their appurtenances; and therein mentioned to have been sur-

rendered by I. K., formerly of &c., on the ____ day of _____, to the use of R. S. and T. W., upon the trusts declared by an indenture therein referred unto, and afterwards for the said I. L. and E. his wife, to surrender, or join with all proper and necessary parties in surrendering, the same premises to M. N., of &c., his heirs and assigns, or some other person present, at the same court, and his heirs, according to the custom of the said manor, to the intent and purpose that a common recovery may be had and suffered of the said hereditaments and premises, by the said I. K., (the equitable tenant for life in possession of the same premises,) and then the said I. L., and E. his wife, to and for the uses, intents, and purposes, thereafter expressed, concerning the same premises: And also constituting and appointing P. R. of &c., their true and lawful attorney, to appear as vouchee, and to enter into the usual warranty, and to do all other acts requisite for perfecting the said recovery (125), the said I. L. and E. his wife, thereby directing the demandant and tenant to be named in the said recovery, to surrender the said premises to and for the uses, intents, and purposes in the said power of attorney expressed or referred unto, of and concerning the same. And I do hereby further authorise and empower the said A. B., to do and execute the said office in my place and stead, as fully and effectually, to all intents and purposes, as I myself could do if personally present, hereby ratifying and confirming all and whatsoever my said deputy steward shall lawfully do by virtue of these presents. In witness, &c.

(*Deputation to examine a feme covert as to her consent to a lease, by trustees of the customary inheritance, to create a forfeiture, for barring an estate tail.*) (126).

Know all men by these presents, that I, J. S., steward of the manor of, &c., have made, ordained, constituted; and appointed, and by these presents do make, ordain, constitute, and appoint A. B. of &c., my deputy steward of the said manor, for the special purpose and turn only of examining E. L., the wife of I. L. of &c., separately and apart from her said husband, as to her free and voluntary consent to the signing, sealing, and delivering of a certain indenture of lease, intended to bear date the ____ day of ____, and made between R. S. of &c., and T. W. of &c. [*the trustees of the inheritance*] of the first part; I. K. [*the equitable tenant for life in possession*] and the said I. L., and E. his wife, of the second part; and Y. Z. of &c., of the third part; whereby the customary or copyheld lands and hereditaments, in the same lease particularly described, (and to which the said R. S. and T. W. were admitted, at a court held for the said manor, on the ____ day of ____, upon the trusts expressed and declared in an indenture, dated the ____ day of ____), with their appurtenances, are demised and granted, or intended to be demised and granted, by the said R. S. and T. W., I. K. and I. L., and E. his wife, to the said Y. Z., his executors, administrators, and assigns, for a term of seven years, from the day of the date of the said indenture of lease, at the yearly rent of 5s.; To the intent that a voluntary forfeiture may be committed, and a seizure made of the said hereditaments and premises, according to the custom of the manor of ____, aforesaid; in order to bar and extinguish all

estates tail of and in the same premises, and all remainders and reversions thereupon limited and expectant; and that an estate by copy of court roll, according to the custom of the said manor, may be re-granted to, and vested in, the said R. S. and T. W., and their heirs, upon the trusts in the said lease expressed, or referred unto. And further to do and execute the said office in any place and stead, as fully and effectually, to all intents and purposes, as I myself could do if personally present; hereby ratifying and confirming all and whatsoever my said deputy steward shall lawfully do, by virtue of these presents. In witness, &c.

(License to demise.)

The manor of ——— } Be it remembered, that on the
in the county of ——— } ——— day of ———, in the year of
our Lord ———, A. Z., lord of the said manor, by J. S., the
steward thereof, did, out of court, give and grant to C. D.,
one of the customary tenants of the said manor, full license, power, and authority, to demise and lease to any person, or persons, willing to take the same, as lessee, or lessees, to the said C. D., but not by way of mortgage, his or their executors, administrators, and assigns, All &c., with the appurtenances (to which same premises the said C. D. was admitted tenant at a court held for the said manor on the ——— day of ———), to hold for any term or number of years, not exceeding — years, to be computed from the ——— day of ——— last; saving always to the lord of the said manor, and to all and every lord and lady, lords and ladies, of the said manor, for the time being, all and all manner of fines, heriots, rents, customs, and services, therefore due, and of right accustomed. And for this license the said C. D. hath paid, for a fine, the sum of £— — —, [when there is a settled fine, add, “according to the custom of this manor”].

(License to fell timber.)

The manor of _____ } Be it remembered, that on the
 in the county of _____ } _____ day of &c., A. Z., lord of
 the said manor, by J. S., the steward thereof, did, out of
 court, give and grant to C. D., one of the customary te-
 nants of the said manor, full license to fell, within _____
 calendar months from the date thereof, _____ oak trees,
 standing and growing in a certain close called _____,
 part of the copyhold tenements of the said C. D., within
 the said manor, and already marked for that purpose by
 the woodward of the said A. Z.; and the same to sell and
 dispose of, or convert to his own use, at his free will and
 pleasure, without rendering any account for the same
 [(or,) the same to be used and employed by the said
 C. D. in the repairs and improvement of his aforesaid te-
 nement, *(as the case may be)*]. And for this license
 the said C. D. hath paid, by way of fine, the sum
 of £_____

*(Letter of Attorney to surrender to a purchaser, the
 purchase money having been previously paid.)*

11. 10. 7. 11. 12. 14
~~Know all men by these presents, that I, A. B., of &c.,~~
~~one of the customary or copyhold tenants of the manor~~
~~of _____, in the county of _____, have made, ordained,~~
~~constituted, and appointed, and by these presents do~~
~~make, ordain, constitute, and appoint C. D., of &c., my~~
~~true and lawful attorney for me, and in my name to ap-~~
~~pear at the next, or any subsequent general, or any spe-~~
~~cial, court baron or customary court, to be holden for~~
~~the said manor; and then and there to surrender into the~~
~~hands of the lord or lady, lords or ladies, of the same ma-~~
~~nor for the time being, by the hands and acceptance of~~
~~the steward, or deputy steward, there then presiding, by~~

*same for
 11. 10. 7. 11. 12. 14*

the rod, according to the custom of the said manor, All &c., with the appurtenances, ~~(and to which same premises I was admitted tenant, at a court hold for the said manor, the ____ day of ____):~~ And the reversion and reversions, remainder and remainders thereof, and all my estate and interest therein or thereto, to the use and behoof of E. F. of &c., his heirs and assigns for ever, according to the custom of the said manor. And further, for me the said A. B., and in my name, to do and execute all and every such acts, matters, and things, as shall be needful or expedient for making such surrender as aforesaid; and for procuring the said E. F., his heirs or assigns, to be admitted tenant to the said copyhold premises, and as fully and effectually, to all intents and purposes, as I myself could or might do, being personally present, hereby agreeing to ratify and confirm all and whatsoever the said C. D. shall lawfully do, or cause to be done, by virtue of these presents. / In witness, &c.

(General Power of Attorney to sell copyholds, and surrender to a purchaser.)

Know all men by these presents, that I, A. B. of &c., one of the customary or copyhold tenants of the manor of &c., have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint C. D., of &c., and E. F., of &c., jointly and severally, and the survivor of them, my true and lawful attornies and attorney, agents and agent for me, in my name and on my behalf, to sell and dispose of, either by public auction or private contract, and for the best price or prices that can in their or his judgment be had or gotten for the same, all or any part of the customary or copyhold hereditaments hereinafter described, respectively

lying within and holden of the manor of _____, in the county of _____, and the customary fee-simple and inheritance thereof, that is to say, All &c., with their appurtenances, (to which same premises I was admitted tenant, to hold to me and my heirs for ever, according to the custom of the said manor, at a general court held the _____ day of _____). And also to make and enter into any contract or contracts in writing, with any person or persons whomsoever, in relation to such sale or sales respectively, as to my said attornies or attorney, agents or agent, shall seem meet. And further, for me, in my name and on my behalf, either at some general or special court baron or customary court to be holden for the manor of _____, aforesaid, or out of court at any time or times after such sale or sales respectively, to surrender into the hands of the lord or lady, lords or ladies, of the said manor for the time being, and according to the custom of the same manor, the said customary or copyhold _____ hereditaments and premises, so to be sold, or any of them; and the reversion and reversions, remainder and remainders thereof, and all my estate and interest therein or thereto, to the use and behoof of the person or persons purchasing the same premises respectively, as aforesaid, and of his, her, or their heirs and assigns for ever, or as he, she, or they shall direct or require, and according to the custom of the manor of _____ aforesaid. And moreover, for me, and in my name, and as my act and deed, to sign, seal, execute, and deliver any deed or deeds to be prepared by and on the part of all or any such purchasers as aforesaid, pursuant to such contract or contracts for sale respectively, containing all reasonable and proper covenants, on the part of me the said A. B., my heirs, executors, and administrators, for the estate, title, possession, and further assurance of the

hereditaments and premises respectively so to be sold as aforesaid; and for the production of any deeds, instruments, or writings, constituting my title to the same respective premises, which, according to the usage and practice in the like cases, are to remain in my custody or power; and for the delivery of attested or other copies thereof, from time to time thereafter, at the request, costs, and charges of such purchaser or purchasers respectively, his, her, or their appointees, heirs, or assigns; and generally for me, and in my behalf, to do, perform, and execute, all or any such other acts, deeds, assurances, matters, and things, as shall be necessary or expedient in and about the premises, and as fully and effectually, to all intents and purposes, as I myself could or might do, being personally present. And I do hereby expressly declare and agree, that the receipt and receipts which shall be given by my said attorneys or agents, or either of them, for all or any part of the monies to arise from any such sale or sales as aforesaid, shall be a good and sufficient discharge, and good and sufficient discharges, to the purchaser or purchasers, or other person or persons paying the same monies respectively, for all or so much, and such part thereof, as shall be in such receipt or receipts respectively expressed or acknowledged to be received; and that such purchaser or purchasers, or other person or persons, shall not afterwards be bound to see to the application of the same monies, or be responsible for the loss, misapplication, or non-application thereof, or any part thereof. And I direct, that the same monies, when so received, shall be paid forthwith into the hands of Messrs. _____, bankers, in _____, to my account and for my use, or to such other person or persons, and in such other manner as I may from time to time require by any note or writing under my hand. Provided

nevertheless, and I do hereby fully authorise my said attornies, or agents, respectively, to retain and deduct out of the said trust monies, all costs, charges, and expenses, which they respectively shall sustain or incur in the execution of the power or trust hereby reposed in them. And I declare and direct, that they shall not be responsible the one for the other of them, nor for any loss which may happen by depositing the trust monies aforesaid with any person or persons whomsoever, for safe custody, or any wise without their respective wilful neglect or default. And I do hereby agree to ratify and confirm all and whatsoever my said attornies or attorney, agents or agent, shall lawfully do or cause to be done, by virtue of these presents. In witness, &c.

(Power of Attorney to procure admission in tail, and to suffer a recovery, in order to acquire the fee-simple.)

Know all men by these presents, that I, A. B. of &c., have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint C. D. of &c., my true and lawful attorney, for me, in my name, and on my behalf to appear at the next, or some subsequent general, or at a special, court baron or customary court, to be holden for the manor of _____, in the county of _____; and then and there to pray, and receive and take admittance of and from the lord or lady, lords or ladies of the same manor, for the time being, by the rod, and according to the custom of the aforesaid manor, to All &c., with the appurtenances, to the use of me, the said A. B., and the heirs of my body lawfully issuing, according to the limitations expressed and declared in and by &c., [here briefly refer to the will or surrender creating the estate tail]. And I do hereby further authorise and em-

power and direct the said C. D., for me, in my name, and on my behalf, immediately after such admittance as aforesaid, to surrender into the hands of the lord or lady, lords or ladies, of the manor of _____, aforesaid, for the time being, by the rod, and according to the custom of the same manor, All and singular the said customary or copyhold _____ hereditaments and premises, with their appurtenances, and the reversion and reversions, remainder and remainders thereof, and all the estate and interest of me the said A. B., therein or thereto, from and after such admittance as aforesaid, to the use of any person whomsoever, being then and there present, and his heirs, to the intent that such person may become perfect tenant of the inheritance of the same premises, according to the custom of the said manor of _____, and in order that a good and perfect common recovery, according to the custom of the same manor, may be suffered of all and singular the said hereditaments and premises, by such names, quantities, and descriptions, as shall be thought expedient. And also for me, in my name, and on my behalf, to enter into the usual warranty and voucher, and generally to do, perform, and execute, or join and concur with the person to be named as demandant in the said recovery, and all or any other person or persons whomsoever in any wise concerned therein, in doing, performing, and executing all such other acts, matters, and things, as, according to the custom of the manor of _____ aforesaid, shall be necessary or expedient for barring the aforesaid estate tail, and all other estates tail, and all remainders and reversions thereupon expectant or depending, of and concerning the said hereditaments and premises; and for surrendering, limiting, and assuring the same premises, with their appurtenances, immediately after such common recovery shall be so suffered, to the use of

me the said A. B., my heirs and assigns for ever, according to the custom of the said manor, and for procuring admittance under and by virtue of such last mentioned surrender, and as fully and effectually, to all intents and purposes, as I myself might or could do being personally present. And I do hereby agree to ratify and confirm all and whatsoever my said attorney shall lawfully do, or cause to be done, in the premises, by virtue of these presents. In witness, &c.

(Power of Attorney by husband and wife, leading to a recovery to bar the estate tail of the wife.) [See the act 47 Geo. 3. sess. 2. c. 8. post; and Deputation to examine the wife, ante, p. 119.]

To all to whom these presents shall come, A. B. of &c., and E. B., wife of the said A. B., severally send greeting: Whereas by an indenture of release, bearing date the ____ day of _____, being the settlement made previous to, and in contemplation of a marriage then intended, and which was soon afterwards duly had and solemnized between B. B., and M. G., spinster, (the father and mother of the said E. B., and both since deceased), the said B. B., in consideration of the said then intended marriage, did covenant to surrender the copyhold hereditaments therein, and hereinafter more particularly mentioned, with the appurtenances, forthwith after the solemnization of the said then intended marriage, to the use of the said B. B., for his life, with remainder to the use of the said M. G. (afterwards M. B.,) for her life, with remainder to the use of all and every the child and children of the said then intended marriage, as tenants in common, and not as joint tenants, and the several and respective heirs of the body and bodies of all and every

such child and children lawfully issuing, with cross remainders between them in tail general, or in the nature thereof, with remainder to the use of a surviving or only child of the said then intended marriage, and the heirs of his or her body lawfully issuing, with remainder to the right heirs, according to the custom of the said manor, of the said B. B. And whereas the said B. B., soon after the solemnization of his marriage with the said M. G., duly surrendered all and singular the said customary or copyhold hereditaments and premises, to the uses aforesaid; and at a court holden for the said manor of —, on the — day of —, the said B. B. was admitted tenant thereto for his life, with such remainders over, as in the said indenture of release and settlement are mentioned. And whereas the said M. B. died in the life time of her husband, the said B. B. And whereas the said B. B. hath lately departed this life. And whereas there was only one child of the said B. B., and M. his wife; namely, the said E., the wife of the said A. B. And whereas the said A. B., and E. his wife, are desirous of suffering a common recovery of the said customary or copyhold hereditaments, and of limiting the same hereditaments to the use of the said A. B. and his heirs; and for that purpose have proposed and agreed to give such powers, (under the authority of the act of parliament, made and passed in the 47th year of the reign of his late majesty, King George the Third; intituled, "An act concerning common recoveries suffered in copyhold or customary courts by attorney,") as are hereinafter contained. Now the said A. B., and E., his wife, she, the said E. B., being first examined separately and apart from the said A. B., her husband, by C. D. of &c., deputy steward of the aforesaid manor for the purpose and turn only mentioned in these presents, duly constituted

by a certain power or deputation, under the hand and seal of J. S. Esquire, chief steward of the same manor, dated the ____ day of _____, and freely and voluntarily consenting thereto, have made, ordained, constituted, and appointed, and by these presents, do make, ordain, constitute and appoint E. F. of &c., their and each of their true and lawful attorney for them respectively, and in their respective names, places, and stead, to be, and appear at the next, or any subsequent general, or at any special court baron, or customary court, to be held for the manor of _____, aforesaid, and then and there to pray, and receive and take admittance, according to the custom of the same manor, to All &c., with the appurtenances thereof, to hold to the said E. B., and the heirs of her body, according to the purport and true meaning of the said recited settlement, and the said surrender made in pursuance thereof as aforesaid; and after such admittance, for them respectively, and in their respective names, places, and stead, to surrender, or join and concur, with all proper and necessary parties, in surrendering the aforesaid copyhold hereditaments and premises, with their appurtenances, to the use of any person present at the same court, and his heirs, according to the custom of the said manor of _____, to the intent to make such surrenderee tenant to the plaint, for the purpose of suffering a common recovery in the manner hereinafter mentioned, of all and singular the said copyhold hereditaments and premises, with their appurtenances. And the said A. B., and E. B., his wife, the said E. B., being first examined separately and apart from the said A. B., her husband, by the said C. D., deputy steward as aforesaid, and freely and voluntarily consenting thereto, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and ap-

point G. H. of &c., their and each of their true and lawful attorney, for them respectively, and in their respective names, places, and stead, to be and appear at such next, or any subsequent general, or special court baron, or customary court, to be held for the manor of _____ aforesaid, in a suit, in form and nature of a writ of entry *sur disseizin en le post*, at common law, to be brought and prosecuted at the same court, according to the custom of the said manor, against the person to whom such surrender shall be made as aforesaid, by virtue of the power in that behalf hereinbefore contained; and then and there to enter into the usual warranty, and make voucher, and otherwise for the said A. B. and E. his wife respectively, and in their respective names, places, and stead, to do and perform all such acts, matters, and things, as by law and the custom of the said manor of _____, may be requisite and necessary for the suffering and perfecting a common recovery, of the aforesaid copyhold hereditaments and premises, with their appurtenances, in order to dock, bar, and extinguish the said estate tail, to which the said E. B. became intitled by virtue of the said recited settlement, and the surrender made in pursuance thereof as aforesaid, and all remainders and reversions thereupon expectant, or depending, of and in the same premises. And further for them the said A. B. and E. his wife, respectively, and in their respective names, places, and stead, immediately after such recovery shall be so suffered as aforesaid, together with the demandant, or recoveror, and tenant to the plaint in the said suit, and all other proper and necessary parties, to surrender into the hands of the lord of the said manor, according to the custom of the same manor, all and singular the aforesaid copyhold hereditaments and premises, with their appurtenances, (and which said demandant, or recoveror, and

tenant, are hereby directed by the said A. B. and E. his wife, respectively, to join in surrendering and releasing the same premises accordingly,) to the use of the said A. B., his heirs and assigns, for ever, according to the custom of the manor of _____ aforesaid. And the said A. B. and E. his wife, do hereby further authorise and empower their said respective attornies, for them respectively, and in their respective names, places, and stead, to do, execute, and perform all such other acts, matters, and things whatsoever, in and about the premises, and as fully and effectually, to all intents and purposes, as they respectively could or might do, being personally present, the said A. B. and E. his wife, hereby respectively ratifying and confirming all and whatsoever their said attornies respectively shall lawfully do or cause to be done, by virtue of these presents. In witness whereof the said A. B. and E. B. his wife, have hereunto set their hands and seals, this _____ day of _____, in the year of our Lord _____.

Signed, sealed, and delivered
by the said A. B. and
E. B. his wife, in the presence of (the said E. B., being first examined, by virtue of the above-mentioned power or deputation, separately and apart from her said husband, and freely and voluntarily consenting to the premises, by) me,

C. D., deputy steward as aforesaid.

(Power of Attorney by equitable tenant for life, leading to a recovery by a feme-covert, equitable tenant in tail in remainder.)

To all to whom these presents shall come, I. K., of &c., sendeth greeting. Whereas, by a certain surrender dated &c., the said I. K. did surrender into the hands of the lord of the manor of —, in the county of —, according to the custom of the same manor, All &c., with their appurtenances, to the use and behoof of R. S., of &c., and T. W., of &c., their heirs and assigns for ever, according to the custom of the said manor, but nevertheless upon and for the trusts, intents, and purposes, and under and subject to the powers, provisoes, declarations, and agreements expressed, declared, and contained, concerning the same premises, in and by an indenture bearing date &c., and made between the said I. K., of the one part, and the said R. S. and T. W., of the other part. And whereas, by virtue of the trusts of the said indenture of the — day of —, the said I. K. is now beneficially entitled to the said customary or copyhold land, hereditaments, and premises, for the term of his life, with such remainders over for the benefit of the issue of his body, as in the said indenture of the — day of —, are mentioned (127), with remainder

(127) I have supposed, that by the trust deed referred to, the copyhold lands were settled on the issue of I. K. in strict settlement, but that he not having any issue, has consented to join in the recovery, without prejudice, nevertheless, to the contingent trust for his children; and that it is the

wish of the tenant in tail, and her husband, to continue the legal estate in the same trustees, upon the trusts of their marriage settlement; to take effect after the death of I. K. without issue. See the power of attorney which follows.

to E. L. the wife of I. L., of &c., in tail general, with remainder to the said I. K., in fee. Now the said I. K. hath made, ordained, constituted, and appointed, and by these presents doth make, ordain, constitute, and appoint C. D., of &c., his true and lawful attorney, for him, and in his name, place, and stead, to appear at the next or any subsequent general, or any special court baron, or customary court, to be holden for the manor of _____ aforesaid, and to pray, and receive and take admittance, equitably, according to the custom of the said manor, to all and singular the lands, hereditaments, and premises, comprised in the said recited surrender, to hold to the said I. K., and his assigns, for the term of his life; and after such admittance for him, in his name and on his behalf, to surrender, or join and concur with all proper and necessary parties in surrendering the aforesaid lands, hereditaments, and premises, with the appurtenances, to the use of Y. Z. of &c., or some other person then present, and his heirs, according to the custom of the said manor of _____, and to the intent to make such surrenderee tenant to the plaint, for the purpose of suffering a common recovery of the said tenements and premises, according to the custom of the same manor, in order to dock, bar, and extinguish the said estate tail, to which the said E. L. is now equitably entitled as aforesaid; and all remainders or reversions thereupon expectant or depending, of and in the said customary or copyhold lands, hereditaments, and premises; and also for surrendering and assuring the same premises, immediately after such recovery shall be so suffered, to the use of the said R. S. and T. W., their heirs and assigns for ever, according to the custom of the manor of _____ aforesaid; but nevertheless, upon and for the trusts, intents, and purposes,

and under and subject to the powers, provisoes, declarations, and agreements expressed, declared, and contained in the said indenture of the — day of —, (other than the trust for the benefit of the said E. L., and the heirs of her body, and the subsequent trusts therein contained), and subject thereto, upon and for the trusts, intents, and purposes, and under and subject to the powers, provisoes, declarations, and agreements expressed, declared, and contained, concerning the same premises, in and by an indenture bearing date &c., and made between &c., (being the settlement executed previous to, and in contemplation of the marriage since had and solemnized between the said I. L., and the said E. L., now his wife); and further for the said I. K., and in his name, place, and stead, to do, execute, and perform all acts, matters, and things whatsoever, in and about the premises, and as fully and effectually, to all intents and purposes, as he the said I. K., could or might do being personally present. And the said I. K. doth hereby agree to ratify and confirm all and whatsoever his said attorney shall lawfully do, or cause to be done, by virtue of these presents. In witness, &c.

(Power of Attorney, under the above-mentioned act of 47 Geo. 3., from a feme-covert, equitable tenant in tail in remainder, and her husband, leading to a recovery, with the concurrence of the equitable tenant for life.) [See the last power.]

To all to whom these presents shall come, I. L. of &c., and E. L., wife of the said I. L., severally send greeting. Whereas, by a certain surrender, dated &c., I. K. of &c., did surrender into the hands of the lord of the manor of —, in the county of —, according to the

custom of the same manor, All &c., with their appurtenances, to the use and behoof of R. S. of &c., and T. W. of &c., their heirs and assigns for ever, according to the custom of the said manor, but nevertheless, upon and for the trusts, intents, and purposes, and under and subject to the powers, provisoes, declarations, and agreements expressed, declared, and contained, concerning the same premises, in and by an indenture bearing date &c., and made between the said I. K., of the one part, and the said R. S. and T. W., of the other part. And whereas, by virtue of the trusts of the said indenture of the — day of —, the said I. K. is now beneficially entitled to the said customary or copyhold lands, hereditaments, and premises, for the term of his life, with such remainders over for the benefit of the issue of his body, as in the said indenture of the — day of — are mentioned, with remainder to the said E. L., in tail general, with remainder to the said I. K., in fee. Now the said I. L. and E. L. his wife, she the said E. L. being first examined separately and apart from the said I. L., her husband, by A. B. of &c., deputy steward of the aforesaid manor, for the purposes and turn only herein mentioned, duly constituted by virtue of a power or deputation by and under the hand and seal of J. S. esquire, steward of the same manor, dated the — day of —, and freely and voluntarily consenting thereto (128), have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint C. D. of &c., their and each of their true and lawful attorney, for them respectively, and in their respective names, places, and stead, to be and appear at the next or any subsequent general, or any special court baron or custo-

(128) See the deputation to A. B. *Ante*, p. 121.

manor court to be held for the manor of — aforesaid; and then and there to pray, and receive and take admittance, equitably, according to the custom of the same manor, to all and singular the lands, hereditaments, and premises comprised in the said surrender of the — day of —, to hold to the said E. L., and the heirs of her body, in remainder, expectant on the decease and failure of issue of the said I. K., and according to the purport and true meaning of the same surrender; and after such admittance, for the said I. L. and E. his wife, respectively, and in their respective names, places, and stead, to surrender, or join and concur with the said I. K., and all proper and necessary parties, in surrendering the aforesaid lands, hereditaments, and premises, with their appurtenances, to the use of Y. Z. of &c., or some other person then present, and his heirs, according to the custom of the said manor of —, to the intent to make such surrenderee tenant to the plaint, for the purpose of suffering a common recovery, in the manner hereinafter mentioned, of all and singular the said customary or copyhold hereditaments and premises, with their appurtenances. And the said I. L. and E. L., his wife, the said E. L. being first examined separately and apart from the said I. L., her husband, by the said A. B. deputy steward, as aforesaid, and freely and voluntarily consenting thereto, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint, P. R. of &c., their and each of their true and lawful attorney, for them respectively, and in their respective names, places, and stead, to be and appear at the next or any subsequent general, or at any special court baron or customary court, to be held for the manor of —, aforesaid; and then and there to gain or lose in a plea of land, to wit, of

all and singular the customary or copyhold hereditaments and premises comprised in the said surrender of the — day of —, with their appurtenances; and for that purpose to appear in a suit, in form and nature of a writ of entry, *sur disseizin en le post*, at common law, to be brought and prosecuted at the same court, according to the custom of the said manor, against the said Y. Z., or other the tenant to the plaint in the said suit; and then and there to enter into warranty, and make voucher, and otherwise for the said I. L. and E. his wife, respectively, and in their respective names, places, and stead, to do and perform all such acts, matters, and things, as, by law and the custom of the said manor of —, are requisite and necessary, for the suffering and perfecting a common recovery of the aforesaid lands, hereditaments, and premises, with their appurtenances, in order to dock, bar, and extinguish the said estate tail, to which the said E. L. is now equitably entitled as aforesaid; and all remainders and reversions thereupon expectant, or depending, of and in the same premises. And further for the said I. L. and E. his wife, respectively, and in their respective names, places, and stead, immediately after such recovery shall be so suffered as aforesaid, together with the demandant, or recoveror, and tenant to the plaint in the said suit, and all other proper and necessary parties, to surrender into the hands of the lord of the said manor, according to the custom of the same manor, all and singular the aforesaid customary or copyhold lands, hereditaments, and premises, with their appurtenances, (and which said demandant, or recoveror, and tenant, are hereby directed by the said I. L., and E. his wife, respectively, to join in surrendering and releasing the same premises accordingly;) to the use of the said R. S. and T. W., their heirs and assigns for ever, according to the

custom of the manor of _____ aforesaid, but nevertheless upon and for the trusts &c., expressed, declared, and contained in the said indenture, of the _____ day of _____, (other than the trust for the benefit of the said E. L., and the heirs of her body, and the subsequent trusts therein contained,) and subject thereto, upon and for the trusts, &c., expressed, declared, and contained, concerning the aforesaid premises, in and by an indenture bearing date &c., and made between &c., (being the settlement executed previous to, and in contemplation of the marriage of the said I. L. with the said E. L. his wife :) And moreover for them the said I. L., and E. his wife, respectively, and in their respective names, places, and stead, to do, execute, and perform all such other acts, matters, and things, whatsoever, in and about the premises, and as fully and effectually, to all intents and purposes, as they respectively could or might do, being personally present; they the said I. L. and E. his wife, hereby agreeing to ratify and confirm all and whatsoever the said C. D. and P. R., respectively, shall lawfully do or come to be done in the premises, by virtue of these presents. In witness whereof, the said I. L. and E. L. his wife, have hereunto set their hands and seals, this _____ day of _____, in the year of our Lord _____.

Signed, sealed, and delivered by the
 said I. L. and E. L. his wife, in the
 presence of (the said E. L. being
 first examined by virtue of the above-
 mentioned deputation, separately and
 apart from her said husband, and freely
 and voluntarily consenting to the pre-
 mises, by) me,

A. B., deputy steward as aforesaid.

(Surrender out of court, by a copyholder of inheritance, to the use of a purchaser.) (129).

The manor of — } Be it remembered, that on the
in the county of — } — day of —, in the — year
of the reign &c., and in the year of our Lord —, A. B.
of &c., one of the customary or copyhold tenants of the
said manor, came before J. S., steward of the said manor,
and, in consideration of the sum of £ —, to the said A.
B. in hand well and truly paid by C. D. of &c., did out of
court surrender into the hands of the lord of the said
manor, by the hands and acceptance of the said steward,
by the rod, according to the custom of the said manor,
All &c., with the appurtenances to the same premises
belonging or appertaining, (and to which said customary
or copyhold hereditaments and premises the said A. B.
was admitted tenant, at a general court held for the said
manor on the — day of —,) and the reversion and
reversions, remainder and remainders, rents, issues, and
profits thereof; and all the estate, right, title, interest,
use, trust, benefit, property, power, claim, and demand
whatsoever of the said A. B., in, to, or out of the same
premises, and every part thereof, to the use and behoof of
the said C. D., his heirs and assigns, for ever, according
to the custom of the said manor.

Taken and accepted, the day and year }
first above written, by me, } A. B.
J. S., steward of the said manor.

(129) It is submitted to be the precedents of court rolls, of quite unnecessary to give any surrenders in court, with the precedents of surrenders out of court, assistance of this surrender, and by way of mortgage, settlement, those which follow, may be easily &c., as the forms, to be found in adapted to every particular case.

(Surrender out of court by husband and wife, of the lands of the wife, to the use of a purchaser in fee.)

The manor of _____ } Be it remembered that on the _____
in the county of _____ } day of _____, in the _____ year of the
reign &c., and in the year of our Lord _____, A. B. of &c.,
and M. his wife (the said M. B. being one of the customary or copyhold tenants of the said manor), came before J. S., steward of the said manor, and, in consideration of the sum of _____, to the said A. B. and M., his wife, in hand well and truly paid by C. D. of &c., and the said M. B. being first examined by the said steward, separately and apart from her said husband, and freely and voluntarily consenting thereto, did out of court surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward, by the rod, according to the custom of the said manor, All &c., with the appurtenances to the same premises belonging or appertaining, (and which said _____ hereditaments and premises are part of the customary or copyhold hereditaments, to which the said M. B. was admitted tenant, at a general court held for the said manor, on the _____ day of _____) and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, use, trust, benefit, property, power, claim, and demand whatsoever, of the said A. B. and M. his wife, respectively, in, to, and out of the same premises, and every part thereof, to the use and behoof of the said C. D., his heirs and assigns for ever, according to the custom of the said manor.

Taken, &c. by me, }

A. B.

M. B.

J. S., steward of the said manor.

[The above form will also serve for a surrender by the husband and wife, of the copyhold lands of the husband, when his alienation does not defeat the wife of her free-bench, *ante*, pt. 1. pa. 87, 90, 93, 146-7.]

(Conditional surrender, out of court, of copyhold lands of inheritance, into the hands of a deputy steward.)

The manor of _____ } Be it remembered that on the
in the county of _____ } _____ day of &c., E. F. of &c., one
of the customary or copyhold tenants of the said manor,
came before C. D. deputy steward of _____, J. S.
chief steward of the said manor, and, in consideration
of the sum of £ _____, of lawful money of Great
Britain, to the said E. F. in hand well and truly paid
by G. H. of &c., did out of court surrender into the
hands of the lord of the said manor, by the hands
and acceptance of the said deputy steward, by the rod,
according to the custom of the said manor, All &c., with
the appurtenances, (and to which same premises the said
E. F. was admitted tenant at a special court held for the
aforesaid manor, on the _____ day of _____), and the reversion
and reversions, remainder and remainders, rents, issues,
and profits thereof, and all the estate, right, title, interest,
use, trust, benefit, property, power, claim, and demand
whatsoever, of the said E. F. in, to, or out of the same
premises, and every part thereof, *To the use* of the
said G. H., his heirs and assigns for ever, according to
the custom of the said manor, subject nevertheless to
and upon this express condition, that if the said E. F.,
his heirs, executors, or administrators, do and shall
well and truly pay, or cause to be paid, unto the said G.
H., his executors, administrators or assigns, the sum of
£ _____, of lawful money aforesaid, on the _____ day of
_____ next, together with interest for the same, after
the rate of £5. *per cent. per annum*, computed from the
date of this surrender, clear of all taxes and deductions
whatsoever, (and being the same principal and interest
monies as are mentioned to be secured to the said G. H.
by the bond of the said E. F., bearing even date here-

with,) then this surrender is to be void, and of no effect, otherwise it is to remain in full force and virtue.

Taken, &c. by me,

E. F.

C. D. deputy steward.

(Surrender out of court, of copyholds of inheritance, into the hands of two tenants, to the use of a trustee, by way of security.)

The manor of _____ } Be it remembered that on
in the county of _____ } the ____ day of &c., A. B. of
&c., one of the customary or copyhold tenants of the said
manor, came before us C. D. of &c., and E. F. of &c.,
two other customary or copyhold tenants of the said
manor, at the house of _____, situate within the same
manor, and, in consideration of the sum of £____, of
lawful money of Great Britain, to the said A. B. in
hand well and truly paid by G. H. of &c., and at the
request, and by the direction of the said G. H., testified
by his subscribing his name at the foot of this surren-
der, did out of court surrender into the hands of the
lord of the said manor, by the hands and acceptance
of the said C. D. and E. F., by the rod, according to the
custom of the same manor, All &c., with the appur-
tenances, (to which same premises the said A. B. was
admitted tenant, at a general court held for the said
manor, on the ____ day of _____) and the reversion
&c., and all the estate &c., To the use of J. K. of
&c., his heirs and assigns, for ever, according to the
custom of the said manor, upon the trusts nevertheless
hereinafter expressed, that is to say, upon trust that the
said J. K., his heirs or assigns, in case the said A. B., his
heirs, executors, or administrators, shall pay or cause to
be paid unto the said G. H., his executors, administra-
tors, or assigns, the full sum of £____, of lawful
money aforesaid, with lawful interest for the same,

clear of all taxes and deductions, on the _____ day, of _____, according to the purport and true meaning of the condition of a certain bond, from the said A. B. to the said G. H., bearing even date herewith, do and shall at any time thereafter, upon the request, and at the costs and charges of him the said A. B., his heirs or assigns, re-surrender all and singular the aforesaid customary or copyhold hereditaments and premises, with the appurtenances, to the use of the said A. B., his heirs and assigns, for ever, according to the custom of the said manor of _____, and in the mean time and until the said _____ day of _____, and also thenceforth, and until the said premises shall be re-surrendered in the manner hereinbefore mentioned (the said principal and interest monies, being so well and truly paid as aforesaid,) do and shall stand seized, or possessed of the said customary or copyhold hereditaments and premises, in trust for the said A. B., his heirs and assigns. But in case default shall be made in payment of the same principal and interest monies, or any part thereof, respectively, in manner aforesaid, then do and shall stand seized or possessed of the said hereditaments and premises, with their appurtenances, upon trust forthwith, or at any time after such default, upon being required thereunto by the said G. H., his executors, administrators, or assigns, to make sale and absolutely dispose of the said customary or copyhold hereditaments and premises, or any part thereof, either by public auction or private contract, and together, or in parcels, for the best price or prices, that in the judgment of the said J. K., his heirs or assigns, can or may be gotten for the same, and to surrender the premises, so to be sold, unto the purchaser or purchasers thereof, his, her, or their heirs and assigns for ever, according to the custom of the said manor, or as he, she, or they shall direct

or require; and upon further trust, by, with, and out of the monies, to arise from such sale or sales, and of the rents and profits of the said hereditaments and premises, from and after any such default, and in the mean time, and until such sale or sales, in the first place, to pay and discharge all such costs, charges and expenses, as the said J. K., his heirs or assigns, shall pay or sustain, in procuring admittance by virtue of, or under this surrender, or otherwise in the execution of the trusts hereby in him and them reposed, and in the next place, do and shall, out of the trust monies aforesaid, pay, satisfy and discharge the said principal and interest monies, intended to be secured to the said G. H., his executors, administrators, and assigns, in and by this surrender, and the said bond bearing even date herewith, or so much and such part thereof as shall then remain due and owing, and shall and do pay the residue and surplus of the trust monies aforesaid, unto the said A. B., his executors, administrators, or assigns; and it is hereby agreed and declared, that the receipt and receipts of the said J. K., his heirs or assigns, shall be a good and sufficient discharge, and good and sufficient discharges, to the purchaser or purchasers of the aforesaid hereditaments and premises, for all or such part of his, her, or their purchase monies, as shall be therein acknowledged or expressed to be received, and that such purchaser or purchasers, his, her, or their heirs, executors, administrators, or assigns, shall not be bound to see to the application of such purchase monies, or be responsible for the loss, misapplication, or non-application thereof, or any part thereof; and also that the said J. K., his heirs or assigns, shall not be chargeable with or accountable for any monies, other than such as he or they shall actually receive, by virtue of the trusts hereby in him and them reposed, nor

with or for any loss or damage which may happen, by placing the trust monies aforesaid in any bank or banker's hands, or elsewhere, for safe custody, or any wise in or about the execution of the aforesaid trusts, without his or their wilful neglect or default.

Taken, &c. by us.

A. B.

G. H.

C. D. } Customary or copyhold tenants
E. F. } of the aforesaid manor.

(Surrender out of court, by a copyholder for lives, to a purchaser.) [The vendor is here presumed to have been a sole purchaser for three lives.]

The manor of — } Be it remembered, that on the —
in the county of — } day of —, in the — year of
the reign &c., and in the year of our Lord —, A. B.
of &c., who, at a court holden for the said manor, on the
— day of —, was admitted to the customary or
copyhold hereditaments hereinafter described, to hold to
him the said A. B., and his heirs, [*or his executors and
administrators*], for the lives of C. D., E. F., and G. H.,
and the life of the longest liver of them, came before J. S.
steward of the said manor, and, in consideration of the
sum of £ — — —, of lawful money &c., to him the said
A. B. in hand well and truly paid by I. K. of &c., did
out of court surrender into the hands of the lord of the
said manor, by the hands and acceptance of the said
steward, by the rod, according to the custom of the said
manor, All &c., with the appurtenances to the same
premises belonging or appertaining; and all the estate,
right, title, interest, benefit, power, claim, and demand
whatsoever of the said A. B., in, to, or out of the
same premises, and every part thereof; to the use of
the said I. K. and his heirs, [*or his executors and ad-*

or require; and upon further trust, by, with, and out of the monies, to arise from such sale or sales, and of the rents and profits of the said hereditaments and premises, from and after any such default, and in the mean time, and until such sale or sales, in the first place, to pay and discharge all such costs, charges and expenses, as the said J. K., his heirs or assigns, shall pay or sustain, in procuring admittance by virtue of, or under this surrender, or otherwise in the execution of the trusts hereby in him and them reposed, and in the next place, do and shall, out of the trust monies aforesaid, pay, satisfy and discharge the said principal and interest monies, intended to be secured to the said G. H., his executors, administrators, and assigns, in and by this surrender, and the said bond bearing even date herewith, or so much and such part thereof as shall then remain due and owing, and shall and do pay the residue and surplus of the trust monies aforesaid, unto the said A. B., his executors, administrators, or assigns; and it is hereby agreed and declared, that the receipt and receipts of the said J. K., his heirs or assigns, shall be a good and sufficient discharge, and good and sufficient discharges, to the purchaser or purchasers of the aforesaid hereditaments and premises, for all or such part of his, her, or their purchase monies, as shall be therein acknowledged or expressed to be received, and that such purchaser or purchasers, his, her, or their heirs, executors, administrators, or assigns, shall not be bound to see to the application of such purchase monies, or be responsible for the loss, misapplication, or non-application thereof, or any part thereof; and also that the said J. K., his heirs or assigns, shall not be chargeable with or accountable for any monies, other than such as he or they shall actually receive, by virtue of the trusts hereby in him and them reposed, nor

with or for any loss or damage which may happen, by placing the trust monies aforesaid in any bank or banker's hands, or elsewhere, for safe custody, or any wise in or about the execution of the aforesaid trusts, without his or their wilful neglect or default.

Taken, &c. by us.

A. B.

G. H.

C. D. } Customary or copyhold tenants
E. F. } of the aforesaid manor.

(Surrender out of court, by a copyholder for lives, to a purchaser.) [The vendor is here presumed to have been a sole purchaser for three lives.]

The manor of _____ } Be it remembered, that on the _____
in the county of _____ } day of _____, in the _____ year of
the reign &c., and in the year of our Lord _____, A. B.
of &c., who, at a court holden for the said manor, on the
_____ day of _____, was admitted to the customary or
copyhold hereditaments hereinafter described, to hold to
him the said A. B., and his heirs, [*or his executors and
administrators*], for the lives of C. D., E. F., and G. H.,
and the life of the longest liver of them, came before J. S.
steward of the said manor, and, in consideration of the
sum of £ _____, of lawful money &c., to him the said
A. B. in hand well and truly paid by I. K. of &c., did
out of court surrender into the hands of the lord of the
said manor, by the hands and acceptance of the said
steward, by the rod, according to the custom of the said
manor, All &c., with the appurtenances to the same
premises belonging or appertaining; and all the estate,
right, title, interest, benefit, power, claim, and demand
whatsoever of the said A. B., in, to, or out of the
same premises, and every part thereof; to the use of
the said I. K. and his heirs, [*or his executors and ad-*

Appendix to the Copyholder.

Administrators], for and during the lives of the said C. D., E. F., and G. H., and the life of the longest liver of them, according to the custom of the said manor.

A. B.

Taken and accepted, the day
and year first above writ-
ten, by me,

J. S. steward of the said manor.

*(Warrant to enter satisfaction on a conditional sur-
render.)*

The manor of _____ } I, C. D. of &c., do hereby
in the county of _____ } acknowledge to have received
of and from A. B. of &c., all principal and interest monies
due and owing to me, upon or by virtue of a conditional
surrender made and executed by the said A. B., of cer-
tain customary or copyhold hereditaments, lying within
and holden of the said manor, and bearing date the _____
day of _____; and I do hereby direct and require the
steward of the court of the said manor, to enter satisfac-
tion thereof, on the court rolls of the same manor, and
for so doing this shall be his sufficient warrant and au-
thority.

C. D.

*(Deed of covenant to surrender copyholds of inheritance,
to a purchaser.)*

This indenture made the _____ day of &c., between
A. B. of &c., of the one part, and C. D. of &c., of the
other part. Whereas the said A. B. hath contracted and
agreed with the said C. D., for the sale to him of the
customary or copyhold hereditaments hereinafter describ-
ed and covenanted to be surrendered, with their appur-
tenances, for an estate of inheritance in fee simple in

possession, according to the custom of the manor of _____, in the county of _____, free from incumbrances as hereinafter mentioned, at or for the price or sum of £ _____. And Whereas the several deeds, evidences, and writings, specified in the schedule hereunder-written, relate as well to the said customary or copyhold hereditaments hereinafter described, as to other hereditaments, the estate and inheritance of the said A. B., of much greater value, and it hath therefore been agreed, that the same deeds, evidences, and writings, shall remain in the custody of the said A. B., and that he shall enter into the covenant for production and safe custody thereof, hereinafter contained (130). Now this indenture witnesseth, that for and in consideration of the sum of £ _____, of lawful money of Great Britain, unto the said A. B. in hand well and truly paid by the said C. D., at or before the sealing and delivering of these presents, the receipt whereof the said A. B. doth hereby acknowledge; and thereof, and from the same and every part thereof, doth acquit, release, exonerate, and discharge the said C. D. his heirs, executors, administrators, and assigns, and every of them for ever, by these presents, (the *ad valorem* stamp in respect of which said purchase money is intended to be affixed to the surrender of the said hereditaments, according to the provisions of the acts of parliament imposing such duty,) he the said A. B. for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said C. D., his heirs and assigns, that the said A. B. or his heirs, and all other necessary parties, shall and will, at the next or some subsequent general, or at any special court baron, or customary court, to be holden for the

manor of _____ aforesaid, or out of court, upon the request; and at the costs and charges of the said C. D., his heirs or assigns, duly surrender into the hands of the lord or lady, lords or ladies, of the said manor, for the time being, according to the custom of the same manor, All &c., with their and every of their appurtenances, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever, of the said A. B., in, to, or out of the same hereditaments and premises, and every part thereof, to the use of the said C. D., his heirs and assigns, for ever, or as he or they shall direct or require, and according to the custom of the said manor, and that in the mean time, and until such surrender shall be so made as aforesaid, and the said C. D., his heirs or assigns, shall procure admittance by virtue thereof, he the said A. B., and his heirs, shall and will stand seized or possessed of all and singular the same customary or copyhold hereditaments and premises, in trust only for the said C. D., his heirs and assigns. And the said A. B. for himself, his heirs, executors, and administrators, doth further covenant, promise, grant, and agree with and to the said C. D., his heirs and assigns, by these presents in manner following, that is to say, that, (for and notwithstanding any act, deed, matter, or thing whatsoever, by him the said A. B. or any of his ancestors, at any time heretofore made, done, committed, executed, or wittingly suffered to the contrary,) he the said A. B., now at the time of the sealing and delivery of these presents, is and standeth lawfully and rightfully seized of the said customary or copyhold lands, hereditaments, and premises, hereinbefore covenanted to be surrendered, with their appurtenances, for a good, sure, perfect, lawful, absolute, and indefeasi-

ble estate of inheritance in fee simple in possession, [according to the custom of the] manor of _____ aforesaid, without any manner of condition, trust, or other restraint, cause, matter, or thing whatsoever, to alter, change, defeat, revoke, impeach, make void, or determine the same; And also that he the said A. B. (for and notwithstanding any such act, deed, matter, or thing as aforesaid,) hath in himself good right, full power, and lawful and absolute authority to surrender, convey, and assure all and singular the said customary or copyhold lands, hereditaments and premises hereinbefore covenanted to be surrendered, with their appurtenances, in manner expressed in and according to the true intent and meaning of the covenant in that behalf hereinbefore contained; And moreover that it shall and may be lawful to and for the said C. D., his heirs and assigns, from time to time, and at all times, for ever hereafter, peaceably and quietly to enter into and upon, have, hold, occupy, possess, and enjoy all and singular the same customary or copyhold hereditaments and premises, with their appurtenances, and to receive and take the rents, issues, and profits thereof, to and for his and their own use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption or disturbance whatsoever, of, from, or by the said A. B., or his heirs, or of, from, or by any other person or persons whomsoever, lawfully or equitably and rightfully claiming, or to claim, by, from, under, or in trust for him or them, or by, from, or under any of his ancestors; and that free and clear, and freed and clearly and absolutely acquitted, exonerated, and discharged or otherwise, by the said A. B., his heirs, executors, and administrators, well and effectually saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other surrenders, gifts, bargains, sales, leases,

mortgages, jointures, settlements, dowers, freebenth, annuities, trusts, wills, entails, forfeitures, escheats, and all and singular other estates, titles, troubles, charges, and incumbrances whatsoever, had, made, done, committed, executed, occasioned, or suffered by him the said A. B. or any of his ancestors, or by any person or persons whomsoever lawfully or equitably claiming, or to claim, by, from, under, or in trust for him, them, or any of them, or by, with, or under his, their, or any of their acts, means, default, privity, consent, or procurement, except only the customary rents, fines, duties, and services payable and to be performed in respect of the same hereditaments and premises, to the lord or lady, lords or ladies of the manor of _____ aforesaid, for the time being; And further that he the said A. B., and his heirs, and all and every other persons and person having, or lawfully or equitably claiming or to claim, any estate, right, title, or interest in, to, or out of the said customary or copyhold hereditaments and premises, or any part thereof, by, from, under, or in trust for him or them, or any of his ancestors, shall and will from time to time, and at all times for ever hereafter, upon the reasonable request, and at the proper costs and charges in the law of the said C. D., his heirs or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other acts, deeds, surrenders, conveyances, and assurances in the law whatsoever, for the further, better, more perfect, and absolute surrendering, conveying, assuring, and confirming all and singular the said customary or copyhold lands, hereditaments, and premises hereinbefore covenanted to be surrendered, with their appurtenances, to the use of the said C. D., his heirs and assigns for ever, or as he or they shall direct or appoint, and according to the custom of the manor of _____ aforesaid, as by the

said C. D., his heirs or assigns, or his or their counsel learned in the law, shall be lawfully and reasonably devised or advised and required. And lastly, that he the said A. B., his heirs, executors, administrators, or assigns, shall and will from time to time, and at all times hereafter, upon reasonable notice, and at the request, costs, and charges of the said C. D., his heirs or assigns, (unless prevented by fire or other inevitable accident,) produce and shew forth, or cause and procure to be produced and shewn forth unto the said C. D., his heirs and assigns, or his or their counsel, attornies, solicitors, or agents, or in any court or courts of law or equity, or upon any motion, petition, examination, commission, trial, or hearing, or otherwise, as occasion shall require, all and every or any of the said deeds, evidences, and writings mentioned and set forth in the schedule hereunder written, for the manifesting, evidencing, maintaining, defending, and proving, the title, estate, right, interest, property, and possession of the said C. D., his heirs and assigns, in and to the said customary or copyhold hereditaments and premises hereinbefore covenanted to be surrendered; and also shall and will upon the like request, costs, and charges of the said C. D., his heirs or assigns, make and deliver, or cause to be made and delivered unto him or them, true and attested or other copies, or extracts, of all or any of the said deeds, evidences, and writings, and shall and will keep and preserve the same respective deeds, evidences, and writings, whole, uncanceled, and unobliterated, (casualties as aforesaid, only excepted.) In witness, &c.

(The schedule above referred unto.)

(Release of freeholds and covenant to surrender copyholds to a purchaser.)

This indenture, made &c., between A. B. of &c., of the one part, and C. D. of &c., of the other part: Whereas the said A. B. hath lately contracted and agreed with the said C. D., for the sale to him of the freehold messuages, lands and hereditaments hereinafter described, and intended to be hereby granted and released, with their appurtenances, for an estate of inheritance in fee simple in possession; and also of the customary or copyhold lands and hereditaments hereinafter also described and covenanted to be surrendered, with their appurtenances, for a like estate of inheritance, according to the custom of the manor of _____, in the county of _____, and respectively free from incumbrances as hereinafter mentioned, at or for the price or sum of £ _____: And Whereas for the purpose of complying with the provisions of certain acts of parliament imposing an *ad valorem* duty on all conveyances of estates, it has been agreed that the sum of £ _____ shall be considered as the consideration money for the purchase of the said freehold hereditaments, and the sum of £ _____ as the consideration money for the purchase of the said customary or copyhold hereditaments, and that the *ad valorem* stamp in respect of the last mentioned hereditaments, shall be affixed to the surrender thereof. Now this indenture, witnesseth that in pursuance and performance of the said recited contract and agreement, and for and in consideration of the sum of £ _____, of lawful money of Great Britain, unto the said A. B. in hand well and truly paid by the said C. D., in the proportions and manner aforesaid, at or before the sealing and delivery of these presents, the receipt whereof the said A. B. doth hereby acknowledge, and thereof and from the same and

every part thereof doth acquit, release, exonerate, and discharge the said C. D., his heirs, executors, administrators, and assigns, and every of them for ever, by these presents; he the said A. B. hath granted, bargained, sold, aliened, released, and confirmed, and by these presents doth grant, bargain, sell, alien, release, and confirm unto the said C. D. (in his actual possession now being, by virtue of a bargain and sale to him thereof made by the said A. B., in consideration of 5s. by indenture bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession,) and to his heirs and assigns, All &c., together with all houses &c. and appurtenances whatsoever, to the said freehold hereditaments and premises belonging or in any wise appertaining, or therewith usually held, occupied, or enjoyed, or accepted, reputed, deemed taken, or known as part, parcel, or member thereof: And the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits of all and singular the said messuages, lands, hereditaments and premises mentioned or intended to be hereby granted and released; and all the estate, right, title, interest, inheritance, use, trust, property, power, claim, and demand whatsoever, both at law and in equity of the said A. B. in, to, or out of the same premises, and every part thereof: And all deeds, evidences, and writings in any wise relating to the same hereditaments and premises, now in the custody or power of the said A. B., or which he can procure without suit at law or in equity, to have and to hold the said messuages, lands, hereditaments, and all and singular other the premises hereinbefore granted and released, or intended so to be, with their appurtenances, unto the said C. D., his

heirs and assigns, to the only proper use and behoof of the said C. D., his heirs and assigns, for ever, and to or for no other use, end, intent, or purpose whatsoever. And this indenture also witnesseth, and for the considerations aforesaid, the said A. B. for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said C. D., his heirs and assigns, that he the said A. B., and all other necessary parties, shall and will, at the next or some subsequent general, or at any special court baron or customary court, to be holden for the manor of _____ aforesaid, or out of court, upon the request and at the costs and charges of the said C. D., his heirs or assigns, duly surrender into the hands of the lord or lady, lords or ladies of the said manor for the time being, and according to the custom thereof, All &c., with all and singular the appurtenances to the same premises belonging or appertaining:— And the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, power, claim, and demand whatsoever of the said A. B. in, to, or out of the same customary or copyhold hereditaments and premises, and every part thereof, to the use of the said C. D., his heirs and assigns for ever, or as he or they shall direct or require, and according to the custom of the manor of _____ aforesaid; and that in the mean time and until such surrender or surrenders shall be so made as aforesaid, and the said C. D., his heirs or assigns, shall obtain admission by virtue thereof, he the said A. B. and his heirs, shall and will stand and be seized or possessed of the same customary or copyhold hereditaments, and premises, in trust only for the said C. D., his heirs and assigns. (And the said A. B. for himself, his heirs, executors, and administrators, doth further covenant, promise, grant, and agree with and to the said C. D., his heirs and assigns, by these

presents in manner following, that is to say, that he the said A. B., now at the time of the sealing and delivery of these presents, is and standeth lawfully and rightfully seized of the said freehold messuages, lands, hereditaments, and premises hereby granted and released, or intended so to be, and of every part thereof, with their appurtenances, for a good, sure, perfect, lawful, absolute, and indefeasible estate of inheritance in fee simple in possession; and of the said customary or copyhold lands, hereditaments and premises hereinbefore covenanted to be surrendered, for a like estate of inheritance, according to the custom of the manor of _____ aforesaid, without any manner of condition, trust, power of revocation, limitation of use or uses, or any other restraint, cause, matter, or thing whatsoever, to alter, change, defeat, revoke, impeach, make void, or determine the same; And also that he the said A. B. now hath in himself, good right, full power, and lawful and absolute authority to grant, bargain, sell, release, surrender, convey, and assure all and singular the said freehold and customary or copyhold hereditaments and premises hereby granted and released, or intended so to be, and hereinbefore covenanted to be surrendered, with their appurtenances, to the use of the said C. D., his heirs and assigns for ever, in manner aforesaid, and according to the true intent and meaning of these presents and the parties hereunto; And moreover that it shall and may be lawful to and for the said C. D., his heirs and assigns, from time to time, and at all times, for ever hereafter, peaceably and quietly to enter into and upon, have, hold, occupy, possess, and enjoy all and singular the same freehold and customary or copyhold hereditaments and premises, with their appurtenances, and to receive and take the rents, issues, and profits thereof, and of every part thereof respectively, to and for

his and their own use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption, or disturbance whatsoever, of from or by the said A. B. or his heirs, or any other person or persons whomsoever, lawfully or equitably and rightfully claiming or to claim any estate, right, title, trust, or interest in, to, or out of the same premises, or any part thereof respectively, and that free and clear, and freed, and clearly and absolutely acquitted, exonerated, and discharged, or otherwise, by the said A. B., his heirs, executors, and administrators, well and effectually saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, settlements, dower, freebench, annuities, uses, trusts, wills, entails, statutes, recognizances, judgments, extents, executions, forfeitures, escheats, and all and singular other estates, titles, troubles, charges, and incumbrances whatsoever, (save and except the customary rents, fines, heriots, duties, and services payable and to be performed to the lord or lady, lords or ladies of the manor of _____ aforesaid, for the time being, for and in respect of the same customary or copyhold hereditaments and premises or any part thereof;) And further, that he the said A. B., and his heirs, and all and every other persons and person having, or lawfully or equitably claiming, or to claim any estate, right, title, trust, or interest in, to, or out of the said hereditaments and premises hereby granted and released, or intended so to be, and hereinbefore covenanted to be surrendered, or any part thereof respectively, (except in respect of the estates and interests hereinbefore excepted,) shall and will from time to time, and at all times hereafter, upon the reasonable request and at the proper costs and charges in the law of the said C. D., his heirs or assigns, make, do, acknowledge, levy, suffer, and exe-

out; or cause and procure to be made, done, acknowledged, levied, suffered, and executed, all and every such further and other acts, deeds, conveyances, surrenders, and assurances in the law whatsoever, for the further, better, more perfect, and absolute granting, releasing, conveying, surrendering, assuring, and confirming all and singular the said freehold and customary or copyhold messuages, lands, hereditaments and premises, hereby granted and released, or intended so to be, and hereinbefore covenanted to be surrendered, with their appurtenances, to the use of the said C. D., his heirs and assigns forever, in manner aforesaid, be the same by fine or fines, common recovery or common recoveries, or any other matter of record, or otherwise howsoever, as by the said C. D., his heirs or assigns, or his or their counsel learned in the law shall be lawfully and reasonably devised or advised and required. [When the freehold and copyhold lands lie intermixed, it may be proper to insert the following clause, though not absolutely necessary, as a conveyance of copyholds by deeds of lease and release is not a cause of forfeiture. *Ante*, pt. I. pp. 165, 507-8.] Provided always, and it is hereby agreed and declared by and between all the said parties hereto, that neither the description of estate aforesaid, nor any other matter or thing in these presents contained shall be deemed, construed, or adjudged, to include all or any of the copyhold hereditaments and premises so contracted to be sold to the said C. D., as aforesaid; in the grant and release intended to be hereby made of the freehold messuages, lands, hereditaments, and premises so also contracted to be sold to the said C. D., but that such grant and release shall be confined expressly to freehold hereditaments only, to the intent that no forfeiture may be committed of the said copyhold hereditaments and

premises, or any part thereof, by the execution of these presents. In witness, &c.

(Qualified covenants for title as to the freehold part, and absolute covenants as to the copyhold part, in a deed similar to the last.)

And the said A. B. for himself, his heirs, executors, and administrators, doth further covenant, promise, grant, and agree with and to the said C. D., his heirs and assigns, by these presents in manner following, (that is to say), that (for and notwithstanding any act, deed, matter, or thing, whatsoever, by him the said A. B., or by _____, his late father deceased, at any time heretofore made, done, committed, executed, or wittingly suffered to the contrary), he the said A. B., now at the time of the sealing and delivery of these presents, is and standeth lawfully and rightfully seized of the said freehold messuages, lands, hereditaments, and premises, hereby granted and released, or intended so to be, and of every part thereof, with their appurtenances, for a good, sure, perfect, lawful, absolute, and indefeasible estate of inheritance in fee-simple, in possession, without any manner of condition, trust, power of revocation, limitation of use or uses, or any other restraint, cause, matter, or thing whatsoever to alter, change, defeat, revoke, impeach, make void, lessen, or determine the same: And that (for and notwithstanding any act, deed, matter, or thing whatsoever by him the said A. B., or any other person or persons whomsoever, at any time heretofore made, done, committed, executed, or wittingly suffered to the contrary) he the said A. B. now at the time of the execution of these presents is seized of or well intitled to the said customary or copyhold lands, heredita-

ments and premises, hereinbefore covenanted to be surrendered, for a like estate of inheritance in fee-simple, in possession, according to the custom of the manor of _____ aforesaid, without any manner of condition, trust, power, or other restraint, cause, matter, or thing whatsoever, to alter, revoke, or determine the same: And also that he the said A. B. (for and notwithstanding any such act, deed, matter, or thing respectively as aforesaid,) now hath in himself, at the time of the sealing and delivery of these presents, good right, full power, and lawful and absolute authority to grant, bargain, sell, release, surrender, convey, and assure all and singular the said freehold and customary or copyhold hereditaments and premises, hereby granted and released, or intended so to be, and hereinbefore covenanted to be surrendered, with their appurtenances, to the use of the said C. D., his heirs and assigns for ever, in manner aforesaid, according to the true intent and meaning of these presents and the parties hereunto. And moreover, that it shall and may be lawful to and for the said C. D., his heirs and assigns, from time to time, and at all times, for ever hereafter, peaceably and quietly to enter into and upon, have, hold, occupy, possess and enjoy all and singular the same freehold and customary or copyhold hereditaments and premises, with their appurtenances, and to receive and take the rents, issues, and profits thereof, and of every part thereof respectively, to and for his and their own use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption or disturbance whatsoever, of, from, or by the said A. B., or his heirs, or of, from, or by any other person or persons whosoever, lawfully or equitably and rightfully claiming or to claim any estate, right, title, or interest, in, to, or out of the said freehold premises, by, from, under, or

in trust for him or them, or by, from, or under the said ———, his late father deceased, or any estate, right, title, trust, or interest in, to, or out of the said copyhold premises, by, from, or under him the said A. B., or any other person or persons whomsoever: and that free and clear, and freed, and clearly and absolutely acquitted, exonerated, and discharged, or otherwise by the said A. B., his heirs, executors, and administrators, well, and effectually saved, defended, kept harmless, and indemnified, of, from, and against all, and all manner of former, and other gifts, grants, surrenders, bargains, sales, leases, mortgages, jointure, settlements, dower, free-bench, annuities, uses, trusts, wills, entails, statutes, recognizances, judgments, extents, executions, forfeitures, escheats, and all and singular other estates, titles, troubles, charges, and incumbrances whatsoever, had, made, done, committed, executed, or wittingly permitted or suffered, of the said freehold premises, by him the said A. B., or by the said ———, his late father deceased, or by any person or persons whomsoever, claiming by, from, under, or in trust, for them, or either of them, or by, with, or under, their, or either of their acts, means, default, privity, consent, or procurement, or had, made, done, committed, executed, or wittingly permitted, or suffered of the said customary or copyhold premises, by the said A. B., or any other person or persons whomsoever, (save and except the customary rents, fines, heriots, duties, and services, payable, and to be performed to the lord or lady, lords or ladies of the manor of ——— aforesaid, for the time being): And further that the said A. B., and his heirs, and all and every persons and person having, or lawfully, or equitably claiming, or to claim any estate, right, title, or interest in, to, or out of the said freehold hereditaments and pre-

mises, or any part thereof, by, from, under, or in trust for him, or them, or the said _____, his late father deceased, or claiming, or to claim any estate, trust, or interest, at law or in equity, in, to, or out of the said customary or copyhold premises, by, or under the said A. B., or any other person or persons whomsoever, (except in respect of the estates or interests hereinbefore excepted), shall and will, from time to time, and at all times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said C. D., his heirs or assigns, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, and executed, all, and every such further and other acts, deeds, conveyances, surrenders, and assurances in the law whatsoever, for the further, better, more perfect, and absolute granting, releasing, surrendering, conveying, assuring, and confirming, all and singular the said freehold messuages, lands, hereditaments and premises, hereby granted and released, or intended so to be, with their appurtenances, to the use of the said C. D., his heirs and assigns for ever, and all and singular the said customary or copyhold lands, hereditaments and premises, hereinbefore covenanted to be surrendered, with their appurtenances, to the use of the said C. D., his heirs and assigns for ever, according to the custom of the manor of _____ aforesaid: be the same by fine or fines, common recovery, or common recoveries, or any other matter of record, or otherwise howsoever, as by the said C. D., his heirs or assigns, or his or their counsel, learned in the law, shall be lawfully and reasonably devised, or advised and required.

(Conveyance of freeholds, and covenant to surrender copyholds, by way of mortgage.)

This indenture, made the — day of —, in the — year &c.; and in the year of our Lord —. Between A. B. of &c., of the one part, and C. D. of &c., of the other part. Whereas the said A. B. is seized of and well intituled to the freehold messuages, lands, and hereditaments hereinafter described, and intended to be hereby granted and released, with their appurtenances, for an estate of inheritance, in fee-simple in possession. And whereas the said A. B. is seized or well intituled, for an estate of inheritance in fee-simple in possession, according to the custom of the manor of 16/11 in the county of —, of or to the customary, or copyhold lands and hereditaments hereinafter described, and covenanted to be surrendered, with their appurtenances. And whereas the said A. B. having occasion for the loan of the sum of £ —, hath applied to and requested the said C. D., to lend and advance him the same, which he the said C. D. hath consented and agreed to do, on having the repayment thereof, with lawful interest, secured to him upon the said freehold and customary or copyhold hereditaments, in the manner hereinafter mentioned; ~~and also collaterally secured by the bond and covenant of the said A. B.~~ And whereas the said A. B. hath by his bond or writing obligatory, bearing even date with these presents, become bound unto the said C. D. in the penal sum of £ —, of lawful money of the United Kingdom of Great Britain and Ireland, current in England, with a condition thereunder written, for making the same void, upon payment by the said A. B., his heirs, executors, or administrators, unto the said C. D. his exe-

ators, administrators or assigns, of the sum of £ — — — of like lawful money, with interest for the same, after the rate of £5, for every one hundred pounds, for a year, on the — — day of — —, now next ensuing, clear of all taxes and deductions whatsoever. Now this indenture witnesseth, that in consideration of the sum of £ — — —, of lawful money aforesaid, advanced and lent by the said C. D. unto the said A. B. at or before the sealing and delivery of these presents, the receipt of which said sum of £ — — —, the said A. B. doth hereby acknowledge, and of and from the same and every part thereof, doth acquit, release, exonerate, and discharge the said C. D., his heirs, executors, administrators and assigns, and every of them for ever, by these presents; He the said A. B. hath granted, bargained, sold, aliened, released, and confirmed, and by these presents doth grant, bargain, sell, alien, release, and confirm unto the said C. D. (in his actual possession now being, by virtue of a bargain and sale to him thereof made by the said A. B., in consideration of 5s., by indenture, bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession), and to his heirs and assigns, All &c.; together with all houses &c., emoluments and appurtenances whatsoever, to the said freehold messuages, lands, hereditaments, and premises belonging, or in anywise appertaining, or therewith, or with any part or parcel thereof, held, used, occupied, or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member thereof:—And the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits thereof. And

all the estate, right, title, interest, use, trust, property, power, claim, and demand whatsoever, at law or in equity, of the said A. B., in, to, or out of the same premises, and every, or any part thereof. *To have and to hold* the said messuages, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, with their and every of their appurtenances unto the said C. D., his heirs and assigns, to the use and behoof of the said C. D., his heirs and assigns for ever, subject nevertheless to the proviso or condition for redemption of the said premises hereinafter contained, (that is to say), Provided always, and these presents are upon this express condition, and it is the true intent and meaning of the parties hereunto; and the said C. D. for himself, his heirs, executors, administrators and assigns, doth hereby covenant and agree with and to the said A. B., his heirs and assigns, that if the said A. B., his heirs, executors, administrators or assigns, do, and shall well and truly pay, or cause to be paid unto the said C. D., his executors, administrators or assigns, the sum of £———, of lawful money aforesaid, on the —— day of ——, now next ensuing, with interest for the same, after the rate of £5, for every sum of £100, for a year, to be computed from the day of the date of these presents, without making any deduction or abatement whatsoever thereout, for or by reason of any taxes, charges, assessments, payments, or impositions whatsoever, already, or at any time hereafter to be taxed, charged, assessed, or imposed upon the said freehold hereditaments and premises, or any part thereof, or upon the said principal sum of £———; or the interest thereof, or anywise for or in respect thereof, by authority of parliament, or otherwise howsoever; then and in such case the said C. D., his heirs or assigns,

shall and will at any time or times after such payment being made as aforesaid, upon the request and at the costs and charges of the said A. B., his heirs or assigns, reconvey, and reassure all and singular the said messuages, lands, hereditaments and premises, hereby granted and released, or intended so to be, with their appurtenances, unto and to the use of the said A. B. his heirs and assigns for ever, or to such person or persons, and to, for, and upon such estate and estates, uses, trusts, intents, and purposes, as he or they shall direct or appoint, free from all incumbrances whatsoever, to be had, made, done, or committed in the mean time by him the said C. D., his heirs, executors, or administrators, or by any person or persons whomsoever, lawfully or equitably claiming, or to claim by, from, or under him, them, or ~~any of them~~. And this indenture also witnesseth, and for the consideration aforesaid, the said A. B. for himself, his heirs, executors, administrators and assigns, doth hereby covenant, promise, and agree with and to the said C. D., his heirs, executors, administrators and assigns, that he the said A. B., or his heirs, and all other proper and necessary parties shall and will, at his or their own proper costs and charges, at the next or some subsequent general or special court baron, to be holden for the manor of _____ aforesaid, or out of court, upon the request of the said C. D., his heirs, executors, administrators or assigns, well and effectually surrender into the hands of the lord or lady, lords or ladies, for the time being, of the said manor of _____, and according to the custom of the same manor, All &c., with the appurtenances to the same premises belonging or appertaining:—And the reversion and reversions, remainder and remainders thereof. And all his and their right, title, estate, and interest in, to, or out of the same

customary or copyhold hereditaments and premises, to the use of the said C. D., his heirs and assigns for ever, according to the custom of the manor of _____ aforesaid, subject nevertheless to a proviso or condition to be contained in the said surrender, for making void the same, on payment by the said A. B. his heirs, executors, administrators or assigns, unto the said C. D., his executors, administrators or assigns, of the said sum of £ — — —, with interest for the same, after the rate, at the time and in manner hereinbefore mentioned. and appointed for payment thereof, clear of all taxes and deductions whatsoever. And the said A. B. for himself, his heirs, executors and administrators doth hereby covenant, promise and agree with and to the said C. D., his executors, administrators and assigns, that he the said A. B. his heirs, executors, or administrators shall and will well and truly pay, or cause to be paid unto the said C. D., his executors, administrators or assigns, the said sum of £ — — —, with interest for the same, after the rate, on the day, and in manner hereinbefore mentioned, without any deduction or abatement whatsoever, according to the purport, true intent, and meaning of these presents, and of the condition of the said in part recited bond or writing obligatory, bearing even date herewith. And the said A. B. for himself, his heirs, executors, administrators and assigns, doth further covenant, promise, and agree with and to the said C. D., his heirs and assigns, by these presents, in manner following, (that is to say) that he the said A. B. now, at the time of the sealing and delivery of these presents, is and standeth lawfully and rightfully seized of and well intitled to the said messuages, lands, hereditaments and premises, hereby granted and released, or intended so to be, and every part thereof, with their appurtenances, for a good, sure, perfect, lawful, absolute, and indefeasible estate of inherit-

ance in fee-simple in possession, and of and in the said customary or copyhold lands, hereditaments, and premises, hereinbefore covenanted to be surrendered, with their appurtenances, for a like estate of inheritance in fee-simple in possession, according to the custom of the manor of _____ aforesaid, without any manner of condition, trust, power of revocation, limitation of use or uses, or any other restraint, cause, matter, or thing whatsoever, to alter, change, defeat, revoke, make void, lessen, or determine the same. And also that he the said A. B. now hath in himself, at the time of the sealing and delivery of these presents, good right, full power, and lawful and absolute authority to grant, release, surrender, and assure all and singular the said freehold and customary or copyhold hereditaments and premises, hereinbefore granted and released, and covenanted to be surrendered, with their appurtenances, unto and to the use of the said C. D., his heirs and assigns for ever, in manner aforesaid, according to the purport, true intent, and meaning of these presents. And moreover that it shall and may be lawful to and for the said C. D., his heirs and assigns, from time to time, and at all times from and after default shall happen to be made in payment of the said principal sum of £_____, or any part thereof, or the interest thereof, or any part thereof, contrary to the true intent and meaning of these presents, and the condition of the said recited bond, peaceably and quietly to enter into and upon, have, hold, occupy, possess, and enjoy all and singular the said freehold and customary or copyhold hereditaments and premises, hereby granted and released, or intended so to be, and hereinbefore covenanted to be surrendered, with their appurtenances, and to receive and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their own use and benefit, without any lawful let, suit, trouble, molestation, evic

fion, ejection, interruption, or disturbance whatsoever of, from, or by the said A. B., his heirs or assigns, or of, from, or by any other person or persons whomsoever; and that free and clear, and freed, and absolutely acquitted, exonerated, and discharged, or otherwise by the said A. B., his heirs, executors and administrators, well and effectually saved, defended, kept harmless, and indemnified of, from, and against all, and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, settlements, jointures, dower, freebench, rents, annuities, uses, trusts, wills, intails, statutes, judgments, recognizances, forfeitures, escheats, extents, executions, and of, from and against all and singular other estates, titles, charges, and incumbrances whatsoever. And further that he the said A. B., and his heirs, and all and every other persons and person having, or lawfully, or equitably claiming, or to claim any estate, right, title, trust, or interest in, to, or out of the said freehold, and customary or copyhold hereditaments and premises, hereby granted and released or intended so to be, and hereinbefore covenanted to be surrendered, shall and will from time to time and at all times, from and after default shall happen to be made in payment of the said principal sum of £ — — —, or any part thereof, or the interest thereof, or any part thereof, contrary to the true intent and meaning of these presents, and the condition of the said in part recited bond, upon the request of the said C. D., his heirs, executors, administrators or assigns, but at the proper costs and charges in the law of the said A. B., his heirs, executors, administrators or assigns, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, and executed, all and every such further and other lawful and reasonable acts, conveyances, surrenders, and assurances in the law whatsoever, for

the further, better, more perfect and absolute granting, conveying, surrendering and assuring all and singular the same freehold and customary or copyhold hereditaments and premises, with their appurtenances unto, and to the use of the said C. D., his heirs and assigns for ever, freed and absolutely discharged from the proviso or condition for redemption hereinbefore contained, and intended to be contained in the surrender so to be made, of the said customary or copyhold hereditaments and premises as aforesaid, and of, and from all right, power, and equity of redemption whatsoever, but nevertheless as to the said customary or copyhold premises subject and according to the custom of the manor of _____ aforesaid, be the same by fine or fines, common recovery or common recoveries, or any other matter of record or otherwise howsoever, as by the said C. D., his heirs, executors, administrators or assigns, or his or their counsel, learned in the law, shall be devised or advised and required. And lastly, it is hereby agreed and declared by and between the said parties to these presents, that in the mean time, and until default shall happen to be made in payment of the said principal sum of £ — — —, or some part thereof, or the interest thereof, or some part thereof, contrary to the true intent and meaning of these presents, and the condition of the said in part recited bond, it shall and may be lawful to and for the said A. B., his heirs and assigns, peaceably and quietly to have, hold, occupy, possess and enjoy all and singular the said freehold and customary or copyhold hereditaments and premises, mentioned or intended to be hereby granted and released, and hereinbefore covenanted to be surrendered, with their appurtenances, and to receive and take the rents, issues, and profits thereof, and of every part thereof respectively, to and for his and their own use and benefit, without any

let, suit, trouble, molestation, eviction, interruption, or disturbance whatsoever, of, from, or by the said C. D., his heirs, executors or administrators, or any person or persons whomsoever, lawfully or equitably, and right-fully claiming or to claim, by, from, or under him, them, or any of them. In witness, &c.

(Covenant in a Marriage Settlement to surrender copy-holds to trustees, upon trusts, to correspond with the uses previously limited of freehold estates.)

And this indenture also witnesseth, that in pursuance, and farther performance of the said recited proposals and agreements, made and entered into on the treaty for the said intended marriage, and for the considerations aforesaid, the said A. B., for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, with and to the said C. D. and E. F., their heirs and assigns, that he the said A. B. or his heirs, and all other necessary and proper parties, shall and will, at the costs and charges of him the said A. B., his heirs, executors or administrators, at the next or any subsequent general, or at some special court baron, or customary court, to be held for the respective manors, whereof the customary or copyhold hereditaments hereinafter described are holden; or out of court, upon the request of the said C. D. and E. F., their heirs or assigns, well and effectually surrender into the hands of the lord or lady, lords or ladies of the aforesaid manors respectively, for the time being, and according to the custom of the same respective manors, All &c. with the appurtenances to the same premises belonging or appertaining. And all his and their right, title, estate, and interest therein or thereto, to the use of the said C. D. and E. F., their

heirs and assigns for ever, according to the custom of the said several and respective manors. But nevertheless upon such trusts, for such intents and purposes, and under and subject to such powers, provisos, declarations and agreements, as will best and nearest correspond with the uses, trusts, limitations, powers, provisos, declarations and agreements, hereinbefore limited, expressed, declared, and contained, of and concerning the freehold hereditaments and premises mentioned or intended to be hereby granted and released, so far as the different nature and tenure of the same estates respectively, and the rules of law and equity, will permit.

(Appointment of Copyholds by a feme covert, in exercise of a power, to uses directed by a purchaser; and covenants by the husband to join with his wife in a surrender, by way of further assurance, and for the title.)

This indenture made the ____ day of ____, in the ____ year, &c. and in the year of our Lord _____. Between A. B. of &c., and M. his wife (heretofore the wife, and afterwards the widow of C. D. of &c. deceased), of the one part, and E. F. of &c., and H. his wife, of the other part. Whereas, at a general court baron, held for the manor of _____, in the county of _____, on the ____ day of _____, All and singular the customary or copyhold hereditaments hereinafter described, with their appurtenances, were duly surrendered by the said C. D. and M. D., then his wife, (now M. B.) to the use of the said C. D. and his assigns for his life, with remainder to the use of the said M., then the wife of the said C. D., (now M. B.) and her assigns for her life, with remainder to such uses as the said C. D. and M. then his wife, (now M. B.) by any deed or deeds to be executed and attested

as therein mentioned, should jointly limit or appoint, and for want of any such appointment, to such uses as the survivor of them the said C. D. and the said M. D., then his wife, (now M. B.) by any deed or deeds under his or her hand and seal, to be attested by two or more credible witnesses, or by his or her last will and testament, in writing, to be executed and attested as therein mentioned, should limit or appoint; and in default of any such direction or appointment, to the use of the said M. D., (now M. B.) her heirs and assigns for ever, according to the custom of the said manor of ____: And at the same court the said C. D. was admitted tenant to the said customary or copyhold hereditaments and premises for the term of his life. And whereas the said C. D. some time since departed this life without having joined with the said M. D. his wife, (now M. B.) in any appointment, by virtue of the joint power so given or reserved to them, by or under the said recited surrender as aforesaid. And whereas at a special court baron held for the said manor of _____, on the ____ day of _____, the said M. D., (now M. B.) was admitted to the said customary or copyhold hereditaments, to hold to her and her assigns for the term of her life; and she the said M. D. hath since intermarried with, and is now the wife of the said A. B. And whereas the said A. B. and M. his wife have contracted and agreed with the said E. F., for the sale to him of the said hereditaments hereinafter described, with the appurtenances, for an estate of inheritance in fee-simple in possession, according to the custom of the manor of _____ aforesaid, free from incumbrances, (except as hereinafter is mentioned,) at or for the price or sum of £_____. And whereas the said E. F. hath requested that the said customary or copyhold hereditaments, so contracted to be purchased by him as

aforesaid, may be conveyed and assured to the uses and in manner hereinafter mentioned. Now this indenture witnesseth, that in pursuance, and part performance of the said recited contract or agreement, and for and in consideration of the sum of £ — — —, of lawful money &c., unto the said A. B. and M. his wife, in hand well and truly paid by the said E. F., at or before the sealing and delivery of these presents, the receipt whereof the said A. B. and M. his wife, do hereby acknowledge; and of and from the same, and every part thereof, do acquit, release, exonerate, and discharge the said E. F., his heirs, executors, administrators and assigns, and every of them for ever, by these presents, (the *ad valorem* stamp, in respect of which said purchase money, is, in compliance with the provisions of the acts of parliament imposing such duty, intended to be affixed to the surrender hereinafter covenanted to be made by the said A. B. and M. his wife;) she the said M. B. by force and virtue, and in exercise and execution of the said power or authority in this behalf given or reserved to her, by and under the said recited surrender made on the — day of —, and of all and every other powers and authorities, power and authority, in anywise enabling her hereunto, and at the request and by the direction of the said E. F., (testified by his being a party to and sealing and delivering these presents,) hath limited and appointed, and by this deed or instrument in writing, by her the said M. B. signed, sealed, and delivered in the presence of and attested by the two credible persons, whose names are intended to be hereon indorsed as witnesses to the signing, sealing, and delivering hereof, by her the said M. D., doth limit and appoint, All and singular the messuages or tenements, lands, and hereditaments hereinafter described, with the appurtenances thereof, to the several uses hereinafter expressed concerning the same, and to or for no other use,

intent, or purpose whatsoever. And this indenture also witnesseth, that in further pursuance and performance of the said recited contract or agreement, and for the consideration aforesaid, the said A. B. for himself and for the said M. B. his wife, and his and her heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said E. F., his heirs and assigns, that he the said A. B. and the said M. B. his wife, or her heirs, and all other necessary parties shall and will, at the next or any subsequent general, or at some special court baron or customary court, to be holden for the manor of _____ aforesaid, or out of court, upon the request, and at the costs and charges of the said E. F., his heirs or assigns, duly surrender into the hands of the lord or lady, lords or ladies of the same manor for the time being, and according to the custom thereof, Aft &c., with the appurtenances to the same premises belonging or appertaining: and all his, her, and their estate, right, title, interest, property, power, claim, and demand whatsoever in, to, or out of the same customary or copyhold hereditaments and premises, and every part thereof, to the use of the said E. F. and his assigns for the term of his natural life, with liberty of committing waste so far as the same may be permitted by the custom of the aforesaid manor, or by license or otherwise, and from and after the decease of the said E. F., to the use of the said H. the wife of the said E. F., and her assigns for the term of her natural life (181), with such liberty of com-

(181) When a husband is desirous of securing to his wife a life interest in copyhold property, care should be taken to avoid any limitation of a contingent nature, as there are no means of conveying a contingent right in lands of that tenure, and the doctrine of

estoppel does not apply to copyholds, *ante*, pt. 1. pa. 149.

The form of limitation here given would create *vested* interests, and the life estate of the wife, in remainder, might be conveyed by a surrender, under the customary

mitting waste as aforesaid, but no further or otherwise, and from and after the decease of the survivor of

private examination as to her voluntary consent.

It is by no means unusual, even when the husband intends to keep a power of disposition over copyhold property, with the concurrence of his wife, to frame the surrender to the use of the husband and wife for their lives, and the life of the survivor [or longer liver] of them, and after the decease of the survivor of them, to the use of the heirs of such survivor.

Under a surrender so worded, the limitation to the heirs of the survivor of the husband and wife is clearly a *contingent* interest, and under the previous limitation, the husband and wife, as clearly, take by *entireties*, and therefore without any power of severance in either of them *alone* (see Co. Litt. 187. b., 299. b. *Purefoy v. Rogers*, 2 Lev. 39. *Back v. Andrews*, 2 Vern. 120. *Green d. Crew v. King*, 2 Sir W. Bl. 1212); but in the late case of *Doe d. Dormer v. Wilson*, 4 Barn. & Ald. 303, the court of B. R. decided, that such previous limitation created *vested* interests in the husband and wife, not only for their joint lives, but for the life of the survivor of them, so that a surrender by the husband and wife in favor of a purchaser in fee, (and which could only pass such in-

terests as were of a vested nature,) was good for the joint lives of the husband and wife, *and the life of the survivor*; and a verdict in ejectment obtained by the customary heir of the wife (who survived her husband), and which ejectment was brought within 20 years from the decease of the wife, was therefore established.

With all possible deference, however, it might be contended, in a case similar to that of *Doe and Wilson*, that, although a limitation to A. and his wife for the lives of two strangers, and the life of the survivor of them, (where the joint interest and possession of A. and his wife might continue during the whole period of the estate limited by the surrender, that is, the husband and wife might outlive both the *cestui que vie*;) would obviously create a vested estate in A. and his wife, not only during the joint lives, but also during the life of the survivor of the *cestui que vie*; yet that under a surrender to A. and his wife for their own lives, and the life of the longer liver [or survivor] of them, and after the decease of the survivor, to the heirs of such survivor, where the joint possession or interest could not by any possibility continue during the whole period of the estate limited by the sur-

them the said E. F. and H. his wife, to the use of the heirs and assigns of the said E. F. for ever, according to

surrender, (the husband and wife being themselves the *cestui que vie*,) the true legitimate construction of the surrender would be, a limitation to A. and his wife for their joint lives, remainder to the survivor for his or her life, remainder to the heirs of the survivor, and then the life interest limited to the survivor, uniting to and being equally *contingent* with the ultimate limitation to the heirs of such survivor, the surrender would create a *vested* interest in the husband and wife during their joint lives *only*, with a contingent remainder in fee to the survivor.

And in support of this construction it might, I think, be further urged, that there would be less inconsistency in considering the words, "*and the life of the longer liver*" as substantive words, to be read "*and to the longer liver for life*," and (aided by the super-added words "*and after the decease of the survivor of them*,") as necessarily implying an express limitation to the survivor of the husband and wife for his or her life, than in denying to those words, any distinct operation, although expressing only the quantum of estate that the husband and wife would have taken, under the limitation im-

mediately preceding, had no such words been engrafted upon it.

I understand that in the above case of *Doe d. Dormer v. Wilson*, the defendant was in possession of evidence to prove, that a mortgage in fee was contemplated, on the execution of the surrender pursuant to Mr. Mordaunt's contract for the purchase, and was, in fact, made some short time afterwards, which necessarily strengthens the presumption, that Mr. Mordaunt intended to keep a power of disposition (in conjunction with his wife), over the *fee-simple* of the estate, and that they could not have understood the effect of the surrender made to them. These circumstances at least militate against any supposition of a design in the parties, to extend the *vested* estate under the surrender, to the life of the survivor of Mr. and Mrs. Mordaunt, *and to that period only*.

I am also informed that the surrender to Mr. and Mrs. Mordaunt, was made by the assignee of a bankrupt, who had previously charged the estate equitably with a sum borrowed on bond, and that in a deed of release of right and covenants for the title, accompanying the surrender, (by which

the custom of the manor of _____ aforesaid, and to or for no other use, intent or purpose whatsoever. And the said A. B. for himself, and the said M. B. his wife, and his and her heirs, executors, and administrators doth further covenant, promise, grant, and agree with, and to the said E. F., his heirs and assigns, by these presents, in manner following, (that is to say,) that the said power of appointment, created by the said recited surrender bearing date the _____ day of _____, is now at the time of the sealing and delivery of these presents a valid and subsisting power, and in no wise exercised, released, vacated or extinguished, either by the said C. D. and the said M. D. late his wife, (now M. B.) during their joint lives, or by the said M. D. (now M. B.), since the decease of the said C. D. And also that the said A. B. and M. B. his wife, or one of them, have or hath in themselves, himself or herself, good right, full power, and lawful and absolute authority to limit and appoint, surrender, convey and assure all and singular the said customary or copyhold messuages or tenements, lands, hereditaments and premises hereinbefore limited and appointed, and co-

It appears that the purchase-money was insufficient for the discharge of the mortgage debt,) it was recited, that the estate had been surrendered by the assignee, at the request of the equitable mortgagee, to the use of Mr. Mordaunt and his wife *and the survivor of them*, and the heirs of the survivor, and that the release of right by the equitable mortgagee (in which the assignee of the bankrupt joined), was framed conform-

ably to that recital, and not made to Mr. and Mrs. Mordaunt for their lives *and the life of the longer liver*; and had the surrender been worded as recited in the above deed, it is quite clear that all the estate limited by the surrender beyond the *joint lives* of the husband and wife, would have been *contingent*, and then the ejectment brought by the customary heir of the survivor, must have failed, from being out of time.

venanted to be surrendered, with their appurtenances, in manner aforesaid, and according to the true intent and meaning of these presents. And moreover, that all and singular the same customary or copyhold messuages or tenements, lands, hereditaments, and premises, with their appurtenances, shall henceforth and at all times for ever hereafter, remain, continue, and be to and for the uses, intents and purposes hereinbefore limited, expressed, and contained of and concerning the same, and be peaceably and quietly held, used, occupied and enjoyed, and the rents, issues, and profits thereof, be had, received, and taken accordingly, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption or disturbance whatsoever of, from, or by the said A. B. and M. his wife, or either of them, their, or either of their heirs, or of, from, or by any other person or persons whomsoever: And that free and clear, and freed and absolutely acquitted, exonerated and discharged, or otherwise by the said A. B. and M. his wife respectively, their respective heirs, executors, and administrators, well and effectually saved, defended, kept harmless, and indemnified of, from, and against all, and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, settlements, customary dower or freebench, annuities, uses, trusts, wills, intails, forfeitures, escheats, titles, troubles, charges, and incumbrances whatsoever, (save and except an indenture of lease hereinbefore granted of the said premises to L. N. of &c., for a term whereof — years were unexpired at — last, at and under the yearly rent of £ — — —; and except also the customary rents, suits, and services payable and to be performed in respect of the said hereditaments and premises to the lord or lady, lords or ladies of the manor of —, aforesaid, for the time being). And further,

that the said A. B. and M. B. his wife, and his and her heirs, and all and every other persons and person having, or lawfully or equitably claiming, or to claim any estate, right, title, trust, or interest in, to, or out of the said customary or copyhold hereditaments and premises, or any of them, or any part thereof, (except in respect of the estates or interests hereinbefore excepted,) shall and will from time to time and at all times hereafter, upon the request, and at the proper costs and charges in the law of the said E. F., or the person or persons for the time being intitled in possession to the same hereditaments and premises, by virtue of the uses hereinbefore expressed and contained, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, surrenders, conveyances, and assurances in the law, whatsoever, for the further, better, more perfect, and absolute surrendering, conveying, assuring, and confirming all and singular the said customary or copyhold messuages or tenements, lands, hereditaments and premises hereinbefore limited and appointed, and covenanted to be surrendered, with their appurtenances, to the uses hereinbefore expressed and contained of and concerning the same, as by the said E. F., or other the person or persons intitled in possession as aforesaid, or his, her or their counsel learned in the law, shall be devised or advised and required. In witness, &c.

Sandwich, President, vol 11 p. 295.
(Bargain and sale of Copyholds to a Purchaser, under vol 2 p. 312)
a Power given to Executors.)

This indenture made the ____ day of ____, in the ____ year &c., and in the year of our Lord ____; between A. B. of &c., and C. D. of &c., (executors named

in and appointed by the last will and testament of E. F. late of &c., deceased,) of the one part, and G. H. of &c., of the other part. Whereas at two several courts baron or customary courts holden for the manor of _____, in the county of _____, on the ____ day of _____, and the ____ day of _____, the said E. F. was admitted on the surrender of S. M. of &c., and R. S. of &c., respectively, to certain customary or copyhold tenements lying within and holden of the same manor, and including the messuages, lands, and hereditaments hereinafter described, and intended to be hereby bargained and sold, limited and appointed or otherwise assured, with their appurtenances, to hold to ~~him~~ the said E. F. and his heirs, according to the custom of the said manor of _____; and the said E. F., after such respective admittances, duly surrendered all and singular the same customary or copyhold hereditaments, to the uses of his will. And whereas the said E. F., in and by his last will and testament in writing, bearing date the ____ day of _____, gave and devised unto the said A. B. and C. D., and their heirs, all and singular his freehold manors, messuages, farms, lands, and hereditaments, with their appurtenances, upon trust, that they the said A. B. and C. D., or the survivor of them, or the heirs of such survivor, should and did, as soon as conveniently might be after his decease, sell and dispose of the same freehold estates, by public auction or private contract, for the most money that in their or his judgment could be had or gotten for the same: And the said testator did thereby authorise and empower the said A. B. and C. D., and the survivor of them, at any time after his decease, in like manner as thereinbefore mentioned, to make sale and dispose of the customary or copyhold hereditaments therein mentioned to have been surrendered by him to the uses of

his will as aforesaid (including the messuages, lands, and hereditaments hereinafter described, and intended to be hereby bargained and sold, limited and appointed or otherwise assured), with their appurtenances. And the said testator by his said will did declare, that the receipt or receipts of the said A. B. and C. D., or the survivor of them, should be a good and sufficient discharge, and good and sufficient discharges, to the purchaser or purchasers of his said freehold and customary or copyhold hereditaments, for all or so much of his, her, or their respective purchase monies, as should in such receipt or receipts be acknowledged or expressed to be received, and that such purchaser or purchasers, his, her, or their heirs, executors, administrators, or assigns, should not afterwards be bound to see to the application of the same purchase monies, or be accountable for any loss, misapplication or nonapplication thereof, or any part thereof. And the said testator by his said will appointed the said A. B. and C. D. executors thereof. And whereas the said E. F. afterwards departed this life, without revoking or in anywise altering his said in part recited will, as far as relates to his real estates so thereby devised, and authorised, and directed to be sold as aforesaid, and the same will was duly proved by the said A. B. and C. D. in the Prerogative Court of Canterbury, on or about the ____ day of _____. And whereas the said A. B. and C. D., by virtue of the said power or authority in that behalf, mentioned and contained in the above in part recited will of the said E. F. deceased, did lately contract and agree with the said G. H. for the sale to him of the messuages, lands, and hereditaments hereinafter described, and the customary fee-simple and inheritance thereof, in possession, free from incumbrances, (except such fines, rents, customs, and services as are payable, and to be

performed to the lord or lady, lords or ladies of the manor of _____ aforesaid, for the time being, for or in respect of the same premises respectively,) at or for the price or sum of £ ____ Now this indenture witnesseth, that for carrying into effect the said recited contract, and for and in consideration of the sum of £ _____, of lawful money of the United Kingdom of Great Britain and Ireland current in England, unto the said A. B. and C. D., in hand well and truly paid by the said G. H., at or before the sealing and delivery of these presents, the receipt whereof the said A. B. and C. D. do hereby acknowledge, and thereof and from the same and every part thereof, do acquit, release, exonerate and discharge the said G. H., his heirs, executors, administrators and assigns, and every of them for ever by these presents; They the said A. B. and C. D., in further pursuance and exercise of the said power or authority in this behalf given to them by the said in part recited will of the said E. F. deceased, and of all and every other powers and authorities, power and authority in anywise enabling them hereunto, have and each of them hath bargained and sold, limited, appointed, conveyed and assured, and by these presents do, and each of them doth bargain and sell, limit, appoint, convey and assure, unto the said G. H. his heirs and assigns, All &c.; together with all erections, buildings, ways, paths, passages, waters, water-courses, profits, emoluments, liberties, privileges, and appurtenances whatsoever, to the said hereditaments and premises belonging or in anywise appertaining: and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. *To have and to hold* all and singular the said customary or copyhold messuages, lands, hereditaments and premisses, mentioned or intended to be hereby bargained and sold, limited and appointed or otherwise assured, with the appurtenances thereof, unto and to

the use of the said G. H., his heirs and assigns for ever; but nevertheless, according to the custom of the said manor of ———, and subject to the rents, fines, customs, and services payable and to be performed to the lord or lady, lords or ladies of the same manor for the time being, for or in respect of the same premises, or any part thereof. And the said A. B. and C. D., for themselves respectively, and their respective heirs, executors, and administrators, but not jointly, or the one for the other of them, or the heirs, executors, administrators, acts or deeds of the other of them, do hereby covenant and declare with and to the said G. H., his heirs and assigns, that they the said A. B. and C. D. have not, nor hath either of them, at any time heretofore, made, done, committed, executed, or wittingly suffered or consented unto any act, deed, matter or thing whatsoever, whereby or by means whereof the said customary or copyhold messuages, lands, hereditaments and premises, hereby bargained and sold; limited and appointed, or otherwise assured, or intended so to be, or any part thereof respectively, are, is, can or may be charged, impeached, affected, or incumbered, in title, estate, or otherwise howsoever. In witness, &c.

(Bargain and sale of Copyholds to a Purchaser, by Commissioners of Bankrupt, and Release of Right by the Assignees and Bankrupt.)

This indenture made the ——— day of ———, in the ——— year &c., and in the year of our Lord ———, between A. B., C. D. & E. F., (three of the commissioners named and appointed in and by the commission of bankrupt hereinafter mentioned to have been lately awarded and issued against G. H. of &c.,) of the first part, I. K. of &c., and L. M. of &c., (assignees chosen as hereinafter mentioned, of the estate and effects of the said

G. H.) of the second part, the said G. H. of the third part, and N. O. of &c., of the fourth part. Whereas at a customary court baron, holden for the manor of _____, in the county of _____, on the _____ day of _____, in the year of our Lord _____, the said G. H. was admitted tenant on the surrender of P. Q. of &c., to all and singular the customary or copyhold hereditaments hereinafter described, with their appurtenances, *to hold* to him the said G. H., and his heirs, by copy of court roll, at the will of the lord, according to the custom of the said manor of _____. And whereas his Majesty's commission under the great seal of Great Britain, grounded on the several statutes made and in force concerning bankrupts, bearing date at Westminster, the _____ day of _____, was awarded and issued against the said G. H., directed to the said A. B., C. D., and E. F., together with _____ and _____, thereby giving full power and authority to the said commissioners, four or three of them, to proceed to execute the said commission. And whereas by indenture of assignment, bearing date the _____ day of _____, and made between the said A. B., C. D., and E. F., of the one part, and R. S. of &c., of the other part: Reciting (among other things) the said commission of bankrupt, and that the said G. H. did in the judgment of the major part of the said commissioners, become bankrupt, according to the true intent and meaning of the several statutes made and in force concerning bankrupts, before the date and suing forth of the said commission, and that they had adjudged him bankrupt accordingly: And after also reciting that the said commissioners, parties thereto, thought it necessary for the better preserving the personal estate and effects of the said G. H., to appoint an assignee thereof provisionally, until choice should be made by the major part in value of the creditors, of an

assignee or assignees of the same estate and effects, pursuant to notice to be given in the London Gazette for that purpose: It is witnessed that the said commissioners, parties to the reciting indenture, for the purposes aforesaid, and in further execution of the said commission, and of the statutes therein mentioned, and by force and virtue thereof, and in consideration of 5*s.*, and of the covenants therein contained on the part of the said R. S., his heirs, executors and administrators, to be performed, did thereby appoint the said R. S., assignee provisionally of the personal estate and effects of the said G. H.: And did also, as much as in them lay, order, bargain, sell, dispose, assign, and set over unto the said R. S., his executors, administrators and assigns, All and singular the goods, wares, and merchandizes, chattels, stock in trade, debts, sum and sums of money, household stuff, and implements of household, and other personal estate whatsoever, of the said G. H., of or to which he was possessed or entitled, or of which any other person or persons was or were possessed in trust for him, at the time he became bankrupt, or at any time since: *to hold* the same unto the said R. S., his executors, administrators, and assigns, in trust for the immediate preservation thereof, and to and for the use and benefit of all the creditors of the said G. H. who had already sought, or should thereafter in due time come in and seek relief, by virtue of the said commission. And whereas by indenture bearing date the ____ day of _____, and made between the said R. S., of the first part, the said A. B., C. D., and E. F. of the second part, and the said I. K. and L. M., of the third part, reciting to the same effect as in the last in part recited indenture; and after also reciting the same indenture; and that at a meeting of the major part of the said commissioners, at Guildhall, London, held on the day of the date of the now reciting indenture, pursuant to no-

tion in the London Gazette, the major part in value of the creditors of the said G. H., who had proved their debts under the said commission, and whose debts respectively amounted to £10 and upwards, did nominate and choose the said I. K. and L. M. to be assignees of the estate and effects of the said G. H., and desired an assignment thereof to be made to them accordingly, by the said R. S. and the said commissioners: it is witnessed that the said R. S., in consideration of 10s. paid to him by the said I. K. and L. M., and by and with the consent of the said commissioners, parties to the reciting indenture, (testified as therein mentioned); did order, bargain, sell, dispose, assign, and set over unto the said I. K. and L. M., their executors, administrators, and assigns, All and singular the personal estate whatsoever of the said G. H., of or to which he was possessed or intitled, or of which any other person or persons was or were possessed in trust for him, at the time he became bankrupt, or at any time since; and all the right, title, interest, property, claim, and demand whatsoever of the said R. S., in or to the same as provisional assignee of the estate and effects of the said G. H. And the said commissioners, parties to the now reciting indenture, (being the major part of the said commissioners in the said commission named and authorised,) in consideration of 5s. paid to them by the said I. K. and L. M., did, as much as in them lay, and they lawfully might, ratify and confirm unto the said I. K. and L. M., All and singular the personal estate whatsoever or wheresoever, of or belonging to the said G. H., therein before ordered, bargained, sold, disposed, assigned and set over by the said R. S., *to hold* the same unto the said I. K. and L. M., their executors, administrators and assigns, upon trust, and for the use, benefit, and advantage of themselves, and the rest of the creditors of the said G. H. who had then already sought, or should thereafter in due time

come in and seek relief, by virtue of the said commission, according to the limitations and directions of the several statutes in that behalf made and provided. And whereas the said commissioners, parties hereto, in further execution of the said commission, and of the statutes therein mentioned, have found, that the said G. H., at the time he became bankrupt as aforesaid, was seized to him and his heirs, in fee simple, according to the custom of the aforesaid manor, or was otherwise interested in or intitled to, (among other hereditaments,) the said customary or copyhold hereditaments hereinafter described, and intended to be hereby bargained and sold, limited and appointed, or otherwise assured, with their appurtenances, but no conveyance hath as yet been made of the same hereditaments, in exercise of the powers given to or vested in the said commissioners, or any of them, by or under the acts of parliament hereinbefore referred unto. And whereas the said commissioners, parties hereto, caused the said hereditaments hereinafter described, and the customary fee-simple and inheritance thereof, in possession, to be put up to sale by public auction, at _____, on the ____ day of _____, and at such sale the said N. O. attended, and was declared to be the highest bidder for, and purchaser of the same hereditaments, at, or for the price or sum of £ — — —. Now this indenture witnesseth, that for carrying the said recited sale and purchase into effect, and for and in consideration of the sum of £ — — —, of lawful money of the united kingdom of Great Britain and Ireland, current in England, unto the said I. K. and L. M., assignees as aforesaid, with the privity and approbation of the said A. B., C. D. and E. F., and also of the said G. H. (testified by their severally being made parties to and sealing and delivering these presents), in hand well and truly

paid by the said N. O., at or before the execution hereof, the receipt whereof the said I. K. and L. M. do hereby acknowledge, and thereof and from the same and every part thereof, do respectively acquit, release, exonerate, and discharge the said N. O., his heirs, executors, administrators and assigns, and every of them for ever, by these presents, and also in consideration of the sum of 10*s.* a piece, of lawful money aforesaid, unto the said A. B., C. D. and E. F., and the said G. H., in hand paid by the said N. O., at or before the execution hereof, the receipt whereof is hereby acknowledged, they the said A. B., C. D. and E. F., in further pursuance and execution of the said commission, and of the statutes therein mentioned, and by force and virtue thereof, have granted, bargained, sold, assigned, limited, appointed, conveyed and assured, and by these presents do, as much as in them lieth, and they lawfully may, grant, bargain, sell, limit, appoint, convey, and assure, and the said I. K. and L. M., and also the said G. H., have and each and every of them hath bargained and sold, remised, released, and confirmed, and by these presents do, and each and every of them doth bargain and sell, remise, release, and confirm, unto the said N. O., his heirs and assigns, All &c., together with all ways &c., to the said hereditaments and premises belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; *to have and to hold* the said customary or copyhold hereditaments and premises mentioned, or intended to be hereby bargained and sold, limited and appointed, or otherwise assured, with the appurtenances thereof, unto and to the use of the said N. O., his heirs and assigns for ever, but nevertheless, according to the custom of the manor of _____ aforesaid, and subject to the rents, customs, suits and services

payable and to be performed in respect of the same premises, to the lord or lady, lords or ladies of the aforesaid manor for the time being. And the said A. B., C. D. and E. F., for themselves respectively, and their respective heirs, executors, and administrators, but not jointly, or the one for the others or other of them, or the heirs, executors, administrators, acts or deeds of the others or other of them, do hereby covenant and declare, with and to the said N. O., his heirs and assigns, that they the said A. B., C. D., and E. F., have not, nor have, nor hath any or either of them, at any time heretofore, made, done, committed, executed, or wittingly suffered or consented unto any act, deed, matter, or thing whatsoever, whereby or by means whereof, the said customary or copyhold hereditaments and premises hereby bargained and sold, limited, and appointed, or otherwise assured, or intended so to be, or any part thereof respectively, are, is, can, or may be sold or conveyed, or charged, impeached, affected, or incumbered in title, estate, or otherwise howsoever. And the said G. H. for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, with and to the said N. O., his heirs and assigns, that he the said G. H., or his heirs, shall and will, at any time or times hereafter, upon the request and at the costs and charges of the said N. O., his heirs or assigns, make, do, suffer, and execute, or join and concur in making, doing, suffering, and executing all or any such further and other acts, deeds, and assurances whatsoever, be the same by common recovery or plaint in nature thereof, release or otherwise howsoever, for the further, better, and more effectually conveying, and assuring all and singular the said customary or copyhold hereditaments and premises hereinbefore bargained and sold, limited and appointed, or otherwise assured, or intended so to be,

with their appurtenances, to the use of the said N. O., his heirs and assigns for ever, according to the custom of the aforesaid manor, as by the said N. O, his heirs or assigns, or his or their counsel learned in the law, shall be devised, advised, or required. In witness, &c.

(Release of Right by a person supposed to be entitled to admittance as customary heir of a surviving trustee.)

To all persons to whom these presents shall come, A. B. of &c., sendeth greeting: whereas at a court baron or customary court holden for the manor of _____, in the county of _____, on the _____ day of _____, C. D. of &c., was admitted tenant to the customary or copyhold hereditaments hereinafter described, under and by virtue of the last will and testament of E. F., then late of &c. deceased, bearing date the _____ day of _____, and of a surrender made by the said E. F. to the use of his said will, to hold to him the said C. D. and his heirs, by copy of court roll, at the will of the lord, according to the custom of the said manor. And whereas it is apprehended that the said A. B. is now legally entitled to be admitted tenant to the said customary or copyhold hereditaments hereinafter described, as the customary heir of G. H., formerly of &c. deceased, who was the surviving trustee named in a certain surrender made of the same hereditaments by J. K. of &c. deceased, at a court holden for the aforesaid manor, on the _____ day of _____. And whereas the said A. B., upon the application and request of the said C. D., hath consented and agreed to release and extinguish all such right, title, and interest in and to the said customary or copyhold hereditaments as may be now vested in him the said A. B. as the customary heir of the said G. H. deceased, in such manner as is hereinafter mentioned. Now know ye, and these presents witness, that in pursuance

and performance of the said recited agreement in this behalf, and in consideration of the sum of 10*s.* of lawful money of Great Britain, paid to the said A. B. by the said C. D., at or before the execution hereof, the receipt whereof is hereby acknowledged, he the said A. B. hath remised, released, and for ever quitted claim, and by these presents doth remise, release, and for ever quit claim unto the said C. D., his heirs and assigns, All the right, title, interest, trust, power, claim, and demand whatsoever (if any) of him the said A. B., as the customary heir of the said G. H. deceased, in, to, or out of All &c., and in, to, or out of all erections, buildings, ways, paths, passages, profits, privileges, advantages, emoluments, and appurtenances whatsoever, to the said customary or copyhold hereditaments and premises belonging, or in anywise appertaining, to the end and intent that all such right, title, interest, claim, or demand as aforesaid, of him the said A. B., may for ever hereafter cease, determine, and be merged and extinguished; and that the said C. D., his heirs and assigns, may henceforth be deemed and considered as the legal and rightful tenant and tenants of the said customary or copyhold hereditaments and premises to the lord or lady, lords or ladies for the time being of the manor of _____ aforesaid, to all intents and purposes whatsoever. In witness whereof the said A. B. hath hereunto set his hand and seal, this ____ day of _____, in the year of our Lord _____.

(Release of Right by the customary heirs in Gavelkind of a surviving devisee in trust, and by a cestui que trust in tail (after an equitable recovery), to a purchaser to whom a previous surrender had been made; and covenants for the title.)

This indenture, of three parts, made the ____ day of

____, in the ____ year &c., and in the year of our Lord ____, between C. D. and E. D. both of &c., (the two only sons and heirs, according to the custom of the manor of ____, in the county of ____, of F. D. late of &c. deceased, who was the surviving devisee in trust, of the real estates of G. H., formerly of &c. deceased,) of the first part; I. H. of &c. (nephew of the said G. H. deceased, and equitable devisee in tail, named in his last will and testament, of the copyhold hereditaments, comprised in the recovery suffered by him the said I. H. as hereinafter mentioned), of the second part; and L. M. of &c., of the third part: Whereas the said G. H., being seized in fee-simple, according to the custom of the manor of ____ aforesaid, of the messuages and hereditaments hereinafter described, with their appurtenances, and having surrendered the same hereditaments to the uses of his will, in and by his last will and testament in writing, bearing date the ____ day of ____, after bequeathing several specific legacies (not thereby chargeable on his real estates), gave, devised, and bequeathed unto and to the use of N. O. and the said F. D., their heirs and assigns, All his freehold and copyhold messuages, lands, tenements, and hereditaments whatsoever, and wheresoever, upon the trusts therein expressed and declared and hereinafter in part mentioned, (that is to say,) in trust for R. the wife of the said G. H., for her life, for her separate use and benefit as therein mentioned, and from and after her decease, in trust for the said L. H., and the heirs of his body lawfully issuing, and for want of such issue, upon such further trusts as in the reciting will are mentioned. And whereas the said testator, G. H., afterwards departed this life, without revoking or altering his said will, which was duly proved in the ____ court of ____, on or about the ____ day of _____. And whereas at a special court baron or cus-

customary court holden for the said manor of _____, on the _____ day of _____, the homage presented the death of the said G. H., and also his said in part recited will, which was thereupon irolled at the same court, and immediately afterwards the said N. O. and F. D., were admitted tenants to the messuages and hereditaments hereinafter described, and so devised to them by the said G. H. as aforesaid, *to hold* to them the said N. O. and F. D., their heirs and assigns for ever, by copy of court roll, at the will of the lord, according to the custom of the said manor of _____, subject nevertheless to and upon the trusts of the said in part recited will of the said G. H. deceased. And whereas at a special court baron or customary court, held for the manor of _____ aforesaid, on the _____ day of _____, the said I. H. was admitted tenant in tail general, equitably, under the limitations and trusts contained in the said will of the said G. H., his late uncle deceased, to all and singular the customary or copyhold messuages and hereditaments hereinafter described, with their appurtenances; and immediately afterwards duly suffered an equitable recovery of the same hereditaments, according to the custom of the aforesaid manor, and at the same court, all and singular the same customary or copyhold hereditaments, with their appurtenances, were surrendered by the demandant or recoveror, and tenant to the plaintiff named in the said recovery, and by the said I. H., to the use of him the said I. H., his heirs and assigns for ever, according to the custom of the said manor of _____, and immediately after such last mentioned surrender, the lord of the said manor granted seizin thereof, equitably, to the said I. H., *to hold* to him and his heirs, according to the custom of the aforesaid manor. And whereas the said N. O. some time since departed this life, leaving the

said F. D. his devisee in trust, under the will of the said G. H. deceased, him surviving. And whereas the said F. D. departed this life in the month of _____, now last past, without making any surrender or other disposition of the trust estate, or interest of and in the customary or copyhold hereditaments hereinafter described, which so became vested in him by survivorship as aforesaid, and leaving the said C. D. and E. D., his two sons and coheirs, according to the custom of the manor of _____ aforesaid, him surviving. And whereas the said I. H. did lately contract and agree with the said L. M., for the sale to him of the customary or copyhold messuages and hereditaments hereinafter described, and the customary fee-simple and inheritance thereof, in possession, free from incumbrances, at or for the price or sum of £_____ And whereas, at a court baron or customary court held this day, for the manor of _____ aforesaid, the said C. D. and E. D., at the request of the said I. H., and also the said I. H., have in consideration of the sum of £_____, therein mentioned to be paid by the said L. M. to the said I. H., surrendered into the hands of the lord of the said manor of _____, according to the custom of the same manor, All &c., with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the right, title, estate and interest therein or thereto, of the said C. D. and E. D. and the said I. H., any or either of them, to the use of the said L. M., his heirs, and assigns for ever, according to the custom of the said manor of _____: And the said L. M. hath at the same court been duly admitted tenant, under and by virtue of the said last mentioned surrender, to all and singular the same messuages hereditaments and premises, with their appurtenances,

to hold to him the said L. M. and his heirs, by copy of court roll, at the will of the lord, according to the custom of the manor of _____ aforesaid. And whereas it hath been proposed and agreed, that such further assurance of the said customary or copyhold hereditaments and premises, and such covenants for the title thereof, should be made and entered into, as is and are hereinafter mentioned and contained, Now this indenture witnesseth, that in pursuance and performance of the said recited proposal and agreement in this behalf, and in consideration of the payment so made by the said L. M., of the sum of £———, unto the said I. H. as aforesaid; and also in consideration of the sum of 10s. of lawful money of Great Britain, unto the said C. D. and E. D., in hand paid by the said L. M., at or before the execution hereof, the receipt whereof is hereby acknowledged; they the said C. D. and E. D., with the like privity and approbation of the said I. H., (testified by his being a party to and sealing and delivering these presents), and also the said I. H. have, and each and every of them hath remised, released, and for ever quitted claim, and by these presents do, and each and every of them doth remise, release, and for ever quit claim unto the said L. M., his heirs and assigns, All the right, title, estate, interest, claim and demand whatsoever, of them the said C. D., E. D., and I. H., and each and every of them of, in, and to the said customary or copyhold messuages, hereditaments, and premises hereinbefore described, and every part thereof. And the said C. D. and E. D. do hereby for themselves severally and respectively, and their several and respective heirs, executors, and administrators, but not jointly, or the one for the other or others of them, or the heirs, executors, administrators, acts or deeds of the other or others of them,

covenant and declare with and to the said L. M., his heirs and assigns, that they the said C. D. and E. D. have not, nor hath either of them, at any time heretofore, made, done, committed, executed, or wittingly suffered or consented unto any act, deed, matter, or thing whatsoever, whereby or by means whereof, the said customary or copyhold hereditaments and premises hereinbefore described, and so surrendered as aforesaid, or any of them, or any part thereof, are, is, can, or may be charged, impeached, or incumbered in title, estate, or otherwise howsoever. And the said I. H. for himself, his heirs, executors, and administrators doth covenant, promise, grant, and agree with and to the said L. M., his heirs and assigns, by these presents, in manner following, that is to say, that (for and notwithstanding any act, deed, matter, or thing whatsoever, by the said C. D., E. D. and I. H., any or either of them, or by the said G. H. deceased, at any time heretofore made, done, committed, executed, or wittingly suffered to the contrary) the said C. D., E. D., and I. H., some or one of of them, at the time of the surrender so made by them the said C. D., E. D., and I. H. of the said customary or copyhold messuages, hereditaments, and premises herein before described, to the use of the said L. M., his heirs and assigns, as aforesaid, was or were lawfully and rightfully seized of the same hereditaments and premises, with their appurtenances, for a good, sure, perfect, lawful, and absolute and indefeasible estate of inheritance, in fee simple, in possession, according to the custom of the manor of _____, aforesaid, without any manner of condition, trust, (except as appears by these presents), power of revocation, or other restraint, cause, matter, or thing whatsoever to alter, change, defeat, revoke, impeach, make void, or determine the same. And also,

that the said C. D., E. D., and I. H., some or one of them, (for and notwithstanding any such act, deed, matter, or thing as aforesaid), now have or hath in themselves, or himself, good right, full power, and lawful and absolute authority to surrender, release, convey, and assure all and singular the aforesaid customary or copyhold messuages, hereditaments, and premises, with their appurtenances, to the use of the said L. M., his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of the parties to these presents. And, moreover, that it shall and may be lawful to and for the said L. M., his heirs and assigns, from time to time, and at all times for ever hereafter, peaceably and quietly to enter into and upon, have, hold, occupy, possess, and enjoy all and singular, the said customary or copyhold messuages, hereditaments, and premises hereinbefore described, and so surrendered, and hereby released, as aforesaid, with their appurtenances; and to receive and take the rents, issues, and profits thereof, to and for his and their own use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption, or disturbance whatsoever of, from, or by the said C. D., E. D., and I. H., any or either of them, their, any or either of their heirs, or of, from, or by any other person or persons whomsoever lawfully, or equitably and rightfully, claiming or to claim, by, from, through, or under them, any or either of them, or the said G. H. deceased: And that free and clear, and freed and absolutely acquitted, exonerated, and discharged, or otherwise by the said I. H., his heirs, executors, and administrators, well and effectually saved, defended, kept harmless and indemnified, of, from, and against all former and other gifts, grants, bargains, sales, leases, mortgages, settlements, dower, or freebench, rents, annuities,

uses, trusts, wills, entails, forfeitures, escheats, and all and singular other estates, titles, charges, and incumbrances whatsoever, had, made, done, committed, executed, or wittingly permitted or consented unto, by the said G. H. deceased, or the said C. D. and E. D., or either of them, or the said I. H., or any person or persons, claiming by, from, through, or under them, any or either of them, or by or with their, any, or either of their privity, consent, or procurement, (save and except the customary fines, rents, suits, and services, payable and to be performed in respect of the same hereditaments and premises, to the lord or lady, lords or ladies of the manor of _____, aforesaid, for the time being). And further, that the said I. H., and his heirs, and the said C. D. and E. D. respectively, and their respective heirs, and all and every other persons and person, having, or lawfully, or equitably claiming or to claim any estate, right, title, or interest, in, to, or out of the said customary or copyhold hereditaments and premises, or any of them, or any part thereof, by, from, through, under, or in trust for him, the said I. H., or the said G. H. deceased, shall and will, from time to time, and at all times hereafter, upon the request, and at the proper costs and charges in the law, of the said L. M., his heirs or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other acts, deeds, surrenders, conveyances, and assurances in the law whatsoever, for the further, better, more perfect, and absolute surrendering, conveying, assuring, and confirming all and singular the said customary or copyhold messuages, hereditaments, and premises hereinbefore described, and so surrendered and hereby released, as aforesaid, with their appurtenances, to the use of the said L. M. his heirs and assigns for ever, or as he or they

shall direct or appoint, and according to the custom of the manor of _____, aforesaid; he the same by customary recovery, or plaint in nature thereof, release, or otherwise howsoever, as by the said L. M., his heirs or assigns, or his or their counsel, learned in the law, shall be lawfully and reasonably devised or advised and required. In witness, &c.

(Declaration of Trust, of Copyholds for lives, by the nominees of a Purchaser.)

This indenture, made the ____ day of _____, in the year of our Lord ____, between I. K. of &c., and L. M. of &c., of the one part, and G. H. of &c., of the other part. Whereas at a court baron or customary court, holden for the manor of _____, on the ____ day of _____, the said G. H., who then held the customary or copyhold hereditaments hereinafter described, for the term of his life and the lives of C. D. and E. F., and the life of the longest liver of them, duly surrendered into the hands of A. Z. Esq. lord of the aforesaid manor, AH &c., with their appurtenances, to the intent that the lord might regrant the same premises to the said G. H., for the lives of him the said G. H., and the said I. K. and L. M. and the life of the longest liver of them *successively*, according to the custom of the said manor; and at the same court the said A. Z. granted seizin of the same premises, unto the said G. H., by the rod, according to the custom of the said manor, to hold the same, with the appurtenances, to the said G. H., for the term of the lives of the said G. H., I. K., and L. M., and the life of the longest liver of them *successively*, by copy of court roll, at the will of the lord, according to the custom of the said manor; and the said L. M. was at the same court

admitted tenant accordingly, and paid to the lord for a fine, on such regrant and admittance, the sum of £—. And whereas the said G. H. was the sole purchaser of the aforesaid customary or copyhold hereditaments and premises, and the names of the said I. K. and L. M. were used in the aforesaid surrender and regrant, in trust only for the said G. H., his executors, administrators, and assigns, as they the said I. K. and L. M. respectively do hereby admit and acknowledge. Now this indenture witnesseth, and in consideration of the premises, the said I. K. and L. M., for themselves respectively, their respective heirs, executors, and administrators, but not jointly, or the one for the other of them, or the heirs, executors, or administrators of the other of them, do hereby covenant, promise, and declare, with and to the said G. H., his executors, administrators, and assigns, that they the said I. K. and L. M. respectively, and all and every persons and person, claiming or to claim, by, from, through, or under them, or either of them, shall and will at any time or times hereafter, upon the request and at the costs and charges of the said G. H., his executors, administrators, or assigns, apply for and receive and take admittance, according to the custom of the aforesaid manor, to all and singular, the said customary or copyhold hereditaments and premises, herein before described, with their appurtenances, for the estate, term, and interest therein, to which they respectively may be entitled, by virtue of the said recited surrender and regrant; and at the like request, costs and charges, duly surrender the same premises, to the use of such person or persons, and in such manner, as the said G. H., his executors, administrators, or assigns, shall direct or require; and in the mean time, and until such last mentioned surrender or surrenders respectively shall be made, and admittance or re-

grant be had and obtained by virtue thereof, shall and will stand possessed of the same customary or copyhold hereditaments and premises, with their appurtenances, for all such term, estate, and interest therein, as he or they respectively, may be entitled to as aforesaid, in trust only for the said G. H., his executors, administrators, and assigns; and shall and will pay, apply, and dispose of the rents, issues, and profits thereof accordingly. And the said G. H. for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, with and to the said L. K. and L. M. respectively, their respective heirs, executors, and administrators, that he the said G. H., his heirs, executors, and administrators, shall and will, at all times hereafter, well and effectually save, defend, keep harmless and indemnified, the said L. K. and L. M. respectively, their respective executors and administrators, and their and every of their lands and tenements, goods and chattels, of, from, and against the payment of any fines, quit rents, sum or sums of money, and the rendering of any heriot or heriots, which shall at any time or times hereafter accrue to the lord or lady, lords or ladies, for the time being, of the manor of ———, aforesaid; and of, from, and against all actions, suits, losses, costs, charges, damages, and expenses whatsoever, which can, shall, or may, or could or might be commenced or prosecuted against, or be incurred or sustained by the said L. K. and L. M. respectively, their respective executors or administrators, by reason or means of their names being so used as *cestui que vie*, in the said in part recited surrender and regrant, as aforesaid, or anywise in relation thereunto. Provided always, and it is hereby agreed and declared, by and between all the said parties hereto, that the said L. K. and L. M. respectively, their respective executors

and administrators, shall not be responsible the one for the other or others of them, or the receipts, payments, acts, deeds, or wilful defaults of the other or others of them; and that they respectively shall not be charged or chargeable with, or accountable for any monies, other than such as they respectively shall actually receive, nor with or for any loss or damage which may happen, by placing all or any part of the monies to be received by them, or either of them, as such trustees respectively, as aforesaid, in any bank or banker's hands, or elsewhere, for safe custody, or otherwise in relation to the trusts aforesaid, so that the same happen without his or their respective wilful neglect or default. In witness, &c.

(Grant of an annuity by a copyholder seized for an estate for life, carved out of the inheritance.)

This indenture, made the ____ day of &c., between A. B. of &c., of the first part, C. D. of &c., of the second part, and E. F. of &c., of the third part. Whereas the said A. B. is seized of the lands and hereditaments hereinafter described, for an estate for the term of his life, according to the custom of the manor of _____, in the county of _____. And whereas the said A. B. hath contracted and agreed with the said C. D. for the sale to him of an annuity, or clear yearly sum of £_____, of lawful money of Great Britain, to be paid to the said C. D., his executors, administrators, and assigns, for and during the natural life of the said A. B., and up to the day of his decease, at or for the price or sum of £_____; the said annuity to be secured upon and out of the said customary or copyhold lands and hereditaments in such manner as hereinafter is mentioned, and to be further secured by the covenant of the said A. B. hereinafter contained, and

by the warrant of attorney of the said A. B. hereinafter recited, and a judgment to be thereupon entered up as hereinafter mentioned. And whereas, upon the treaty for the sale of the said annuity, it was stipulated that the same should be repurchasable upon the terms hereinafter expressed, and that the costs and expenses attending the examination of the title to the said estate, and of preparing and perfecting the securities for the same annuity, and of preparing and enrolling a memorial or memorials thereof, should be borne and paid by the said A. B. And whereas the said A. B., in pursuance of the said agreement in that behalf, hath executed a certain deed poll or warrant of attorney, bearing even date with these presents, authorizing G. H. and I. K., attorneys of his majesty's Court of King's Bench at Westminster, jointly and severally, or any other attorney of the same court, as of _____ term now last past, _____ term next ensuing, or any subsequent term, to appear for him the said A. B. in the said court, in an action of debt for the sum of £_____, for money borrowed, at the suit of the said A. B., and thereupon to confess judgment by *nihil dicit* or otherwise, for that sum, together with costs of suit. Now this indenture witnesseth, that in pursuance and further performance of the said recited contract or agreement, and for and in consideration of the sum of £_____, of lawful money aforesaid, unto the said A. B. in hand well and truly paid by the said C. D., in notes of the governor and company of the bank of England, payable to bearer on demand, the receipt of which said sum of £_____, the said A. B. doth hereby acknowledge, and thereof and from the same and every part thereof, doth acquit, release, and discharge the said C. D., his heirs, executors, administrators, and assigns for ever by these presents: He the said A. B. for himself, his heirs, executors, and

administrators, doth hereby covenant, promise, and agree with and to the said C. D., his executors, administrators, and assigns, that he the said A. B. shall and will well and truly pay, or cause to be paid, unto the said C. D., his executors, administrators, or assigns, for and during the natural life of the said A. B., an annuity or yearly sum of £____, of lawful money aforesaid, by four equal quarterly payments, on the several days following, that is to say, the ____ day of ____ the ____ day of ____, the ____ day of ____, and the ____ day of ____; the said annuity to be so paid in the common dining hall of the Inner Temple, London, between the hours of 10 and 11 in the forenoon, free and clear of and from all taxes and deductions whatsoever, parliamentary or otherwise, and the first quarterly payment thereof to be made on the ____ day of ____, now next ensuing: And also that the heirs, executors, or administrators of the said A. B. shall and will, within one calendar month next after his decease, well and truly pay or cause to be paid to the said C. D., his executors, administrators, or assigns, a proportional part of the said annuity, from the quarterly day of payment next preceding the decease of the said A. B., or from the day of the date of these presents, if he shall happen to die before the first quarterly payment shall become due, up to, and until the day of his death. *And this indenture also witnesseth*, that in further pursuance and performance of the said recited contract or agreement, and for the consideration hereinbefore mentioned, and also in consideration of the sum of 10s. of lawful money aforesaid, unto the said A. B. in hand paid by the said E. F. at or before the execution hereof, the receipt whereof is hereby acknowledged: He the said A. B. for himself, his heirs, executors, and administrators, at the request and by the direction of the said C. D. (testified by his

stealing and delivering these presents) doth hereby covenant, promise, and agree with and to the said E. F., his heirs and assigns, that he the said A. B. shall and will, at his own costs and charges, at the next or some subsequent general, or some special, court baron or customary court, to be holden for the manor of _____ aforesaid, or at any time hereafter out of court, upon the request of the said C. D., his executors, administrators, or assigns, or of the said E. F., his heirs or assigns, well and effectually surrender or cause to be surrendered into the hands of the lord or lady, lords or ladies of the said manor for the time being, and according to the custom of the same manor, All &c., with their appurtenances; and the reversion &c., and all the estate &c., to the use of the said E. F., his heirs and assigns during the life of the said A. B., according to the custom of the said manor of _____, upon and for the trusts, intents, and purposes hereinafter expressed and declared concerning the same premises, that is to say, upon trust that the said E. F., his heirs and assigns, do and shall pay the rents, issues, and profits of the said customary or copyhold hereditaments and premises, unto the said A. B. and his assigns, or otherwise permit and suffer him and them to receive and take the same, in the mean time and until some default shall be made in payment of the said annuity or yearly sum of £_____, hereby intended to be secured, or some part thereof, at or on the days or times and in the manner hereinbefore limited and appointed for payment of the same: And upon further trust, that in case the said annuity or yearly sum, or any part thereof, shall happen to be behind and unpaid by the space of 21 days, next over or after any of the said days whereon the same is so appointed and ought to be paid as aforesaid, (being lawfully demanded,) then and so often the said E. F., his

heirs or assigns shall from time to time by and out of the rents and profits of the aforesaid hereditaments and premises, and, if necessary, by making distresses upon, or bringing actions against, all or any of the tenants or occupiers of, the same premises, for recovery of the same rents and profits, or by demise, mortgage, or absolute sale, (such sale or sales to be either by public auction or private contract), of all or any part or parts of the said lands, hereditaments and premises, for all or any part of the estate for life therein of the said A. B., or by such other ways and means as to the said E. F., his heirs or assigns, shall seem meet, raise and levy such sum and sums of money as will be sufficient to pay and satisfy the said annuity or yearly sum of £ — — —, or so much thereof as shall from time to time be in arrear and unpaid, and also all such costs, charges, and expenses, as the said C. D., his executors, administrators, or assigns, or the said E. F., his heirs, or assigns, shall pay, sustain, or be put unto by reason of the non-payment of the said annuity or yearly sum, at or on the days and in the manner hereinbefore appointed for payment thereof, or the performance of the trusts hereby created; and do and shall pay and apply the monies so to be levied and raised, in or towards payment or satisfaction of the said annuity, and all such costs, charges, and expenses as aforesaid accordingly; and shall and do pay the residue and surplus of the monies so to be levied or raised, and of the rents and profits of the said hereditaments and premises, after full payment and satisfaction of the said annuity or yearly sum of £ — — —, and all arrears thereof, and all such costs, charges, and expenses as aforesaid, unto the said A. B. and his assigns, for his or their own use and benefit: And it is hereby agreed and declared between the said parties hereto, that the receipt and receipts of

the said E. F. his heirs or assigns shall be a good and sufficient discharge, and good and sufficient discharges to the tenants and occupiers of the said hereditaments and premises, for the rents, issues, and profits thereof, and to any such mortgagee or mortgagees, purchaser or purchasers, of all or any part of the same premises as aforesaid, for his, her, or their purchase or mortgage monies, or for so much thereof respectively as shall in such receipt or receipts be acknowledged or expressed to be received, and that the person or persons paying the same monies, and taking such receipt or receipts for the same as aforesaid, shall not afterwards be bound to see to the application thereof, or be responsible for the loss, misapplication, or non-application thereof, or any part thereof. Provided also that the said E. F., his heirs or assigns, shall not be charged or chargeable with or responsible for any monies, other than such as he or they shall actually receive by virtue of the trusts hereby in him and them reposed, nor with or for any loss or damage which may happen by placing all or any part of the same trust monies in any bank or bankers' hands, or elsewhere, for safe custody, or any wise in or about the execution of the aforesaid trusts without his or their wilful neglect or default. And the said A. B. for himself, his heirs, executors, and administrators, doth covenant, promise, and agree with, and to the said C. D. his executors, administrators, and assigns, and also with and to the said E. F. his heirs and assigns (separately and apart from the said A. B. his executors, administrators, and assigns, and so far as relates to the title, possession, and further assurance of the said customary or copyhold hereditaments and premises), by these presents, in manner following, that is to say, that he the said A. B., is and standeth lawfully and rightfully seized of the said lands, heredita-

ments, and premises, for an estate for the term of his life according to the custom of the manor of _____ aforesaid, without any condition, restraint, or other cause, matter, or thing whatsoever, to change, alter, revoke, make void, lessen, or determine the same: And also that he the said A. B., hath good right to surrender and assure the same lands, hereditaments, and premises to the use of the said E. F., his heirs and assigns, upon the trusts, and in manner aforesaid, and according to the true intent and meaning of the covenant in that behalf hereinbefore contained. And, moreover, that the said E. F., his heirs and assigns, shall and may henceforth, for and during the life of the said A. B., peaceably and quietly enter into and upon, have, hold, occupy, and enjoy, all and singular the same customary or copyhold hereditaments and premises, with their appurtenances, and receive and take the rents and profits thereof, upon the trusts aforesaid, free and clear of and from all former and other gifts, grants, surrenders, mortgages, leases, rents, annuities, and all other titles, troubles, charges, and incumbrances whatsoever. And further, that he the said A. B., and all and every persons and person having, or lawfully or equitably claiming or to claim, any estate, right, title, trust, or interest, in, to, or out of the said hereditaments and premises, or any part thereof, shall and will, upon every reasonable request of the said C. D., his executors, administrators, or assigns, or of the said E. F., his heirs or assigns, but at the costs and charges of the said A. B., make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other acts, assurances, matters, and things whatsoever, for the better and more effectually charging the said customary or copyhold lands, hereditaments and premises, with the payment of the said annuity or yearly

sum of £ — — —; and, for the further and more effectually limiting and assuring the same premises, to the use of the said E. F., his heirs and assigns, upon the trusts aforesaid, and according to the true intent and meaning of these presents, as by the said C. D., his executors, administrators, or assigns, or the said E. F., his heirs or assigns, or his, their, or any of their counsel learned in the law, shall be lawfully and reasonably devised, or advised and required. And, moreover, that he the said A. B., shall not nor will, at any time or times hereafter, depart from or leave the kingdom on military service or otherwise, without first giving to the said C. D., his executors, administrators, or assigns, one calendar month's notice thereof in writing, under the hand of him the said A. B.: And that he the said A. B., shall and will, from time to time, and at all times during his life, at the request of the said C. D., his executors, administrators, or assigns, appear in person, as often as there shall be occasion, upon having reasonable notice, at any office or place of insurance, or send to such office notice of the place of abode of him the said A. B., and, if necessary, vouchers or certificates of the state of his health, in order that the said C. D., his executors, administrators, and assigns, may be enabled to insure his and their interest in the life of the said A. B., in such manner as he or they may think advisable. [*When the estate is large, it may here be desirable to insert the ordinary form of an appointment of a receiver of the rents.*] And this indenture further witnesseth, and it is hereby declared and agreed, by and between the said parties to these presents, that the judgment to be entered up against the said A. B., as aforesaid, upon the said recited warrant of attorney, is intended and agreed to be a further security to the said C. D., his executors, admini-

histrators, and assigns, for the said annuity or yearly sum of £——, and such proportionate part thereof as aforesaid, but that no execution or executions shall be issued or taken out upon such judgment, unless and until the said annuity, or yearly sum, or some part thereof, or such proportionate part thereof, shall be in arrear for the space of thirty-one days, next after the same shall become due and payable: And that in case the said annuity or yearly sum of £——, or any part thereof, or such proportionate part thereof, shall be behind and unpaid by the space of thirty-one days, then and in such case, and so often as the same shall happen, it shall and may be lawful to and for the said C. D., his executors, administrators, or assigns, to sue out such execution or executions, upon or by virtue of the said judgment, as he or they shall think fit, for the recovery of the arrears of the said annuity, and all costs and expenses which he or they shall bear, pay, or sustain, for or by reason of the nonpayment thereof. And it is hereby further declared and agreed, that the said C. D., his executors, administrators, or assigns, shall, by and with, and out of the money to be recovered or raised by the ways and means last mentioned, pay and satisfy himself and themselves all arrears of the said annuity or yearly sum of £——, and all costs, charges, and expenses occasioned by nonpayment thereof, and shall pay the residue and surplus of the monies so to be recovered or raised, to the said A. B., his executors, administrators, or assigns, for his and their own use and benefit. Provided always, and it is hereby agreed and declared, by and between the said parties to these presents, that it shall not be necessary for the said C. D., his executors, administrators, or assigns, to revive, or cause to be revived, the said judgment, or do any act, matter, or thing, to keep

the same on foot, notwithstanding the same judgment shall have been entered of record, for the space of one year or upwards; and that the said A. B., his heirs, executors, or administrators, shall not, nor will have or take, or attempt by any ways or means whatsoever, to have or take any advantage of the want of reviving or keeping the said judgment on foot; and that if he or they shall attempt so to do, by action or other proceeding or proceedings whatsoever, this present agreement shall or may be pleaded or shewn in bar thereto, any rule or practice of the court of King's Bench to the contrary thereof, in any wise notwithstanding. Provided nevertheless, that after the decease of the said A. B., and full payment to the said C. D., his executors, administrators, and assigns, of the said annuity, or yearly sum of £———, and all arrears thereof, up to the day of the decease of the said A. B., and of all such costs, charges, and expenses, as aforesaid, the said C. D., his executors, administrators, or assigns, shall and will, at the request, costs, and charges, of the heirs, executors, or administrators, of the said A. B., acknowledge satisfaction upon the record of the said judgment, in due form of law, or do any further or other reasonable act or acts, matters or things, that may then be required in regard thereto, so that for the doing thereof, the said C. D., his executors, administrators, or assigns, be not compellable to travel from his or their usual place or places of abode. Provided always, and it is hereby declared and agreed, by and between the said C. D. and the said A. B., that in case the said A. B. shall, at any time after the expiration of two years, to be computed from the day of the date of these presents, be desirous of re-purchasing the said annuity or yearly sum of £———, and shall give to the said

C. D., his executors, administrators, or assigns, three calendar months' notice in writing of such desire; and upon the expiration of the said notice, or at any time afterwards, and on giving such notice as aforesaid, shall well and truly pay, or cause to be paid, to the said C. D., his executors, administrators, or assigns, the full sum of £— — —, being the consideration money for the purchase of the said annuity; and do and shall also well and truly pay, or cause to be paid, to the said C. D., his executors, administrators, or assigns, all sums of money, that shall then be due to him or them, for or on account of the said annuity of £— — —, and also a proportionate part of the same annuity, up to and inclusive of the day of re-purchasing the same, and shall also well and truly pay, or cause to be paid, to the said E. F., his heirs or assigns, all sums of money which shall then be due to him or them, for or on account of such costs, charges, and expenses, as shall have been advanced, paid, or incurred by him or them, in the execution of the trusts aforesaid; then and in that case the said C. D., his executors, administrators, or assigns, shall and will accept and take the said sum of £— — —, as and for the price of re-purchase, and in satisfaction and full discharge of the said annuity of £— — —; and upon the request, and at the costs and charges of the said A. B., his heirs, executors, or administrators, the said C. D., his executors, administrators, or assigns, shall and will acknowledge satisfaction upon the record of the said judgment; and then, and in such case, the said annuity of £— — —, and the several covenants and agreements, powers and remedies, hereinbefore contained, for payment and security of the said annuity, shall cease and be void, to all intents and purposes whatsoever; and then, also, the

said E. F., his heirs or assigns, shall and will, at the request, costs, and charges, of the said A. B., re-surrender and re-assure all and singular the said customary or copyhold hereditaments and premises, with their appurtenances, to the use of the said A. B. and his assigns, for his life, subject nevertheless, and without prejudice, to any such sales, mortgages, or demises, which may be made at any time hereafter, under and by virtue of the trusts hereinbefore contained. In witness, &c. (132).

(Power to enable successive tenants for life of a manor, to grant licenses to demise to copyholders.) (133).

Provided always, and it is hereby further declared and agreed, by and between all the said parties to these presents, that it shall and may be lawful, to and for the said A. B. and C. D. respectively, when, and as they respec-

(132) It would be necessary to register a memorial of the above deed, in the form given in the act of 53 G. 3. c. 141, and by which the act of 17 G. 3. c. 26, is repealed.

As the clause in the latter act, requiring the consideration for the annuity, and the name of the person by whom, or on whose behalf it is advanced, to be stated in every instrument forming part of the security, is not repeated in the act of 53 G. 3., it would be sufficient to state, in the surrender, that the same was made by A. B., in consideration of £ —, paid to him by C. D., and upon the trusts of a certain deed, made between &c.,

by which an annuity was granted by A. B., to C. D., for the life of the said A. B. If, however, C. D. acted as a trustee only for another person, it would then be necessary to state the name &c. of such person in the surrender, *and also in the warrant of attorney*, otherwise the instrument is rendered void, by the 4th sect. of the act of 53 G. 3.

The *ad valorem* duty, I apprehend, is to be affixed to the surrender, as that is declared by the acts of 48 G. 3. c. 149. and 55 G. 3. c. 184. (*post.*) to be the principal instrument.

(133) *Ante*, pt. 1. pa. 522.

tively shall be in the actual possession of the aforesaid manor of _____, by virtue of and under the limitations hereinbefore contained, to grant to all or any of the customary or copyhold tenants, of the same manor, any license or licenses to demise or lease all or any part of the lands, tenements, or hereditaments, holden by them respectively, by copy of court roll of the said manor, so, nevertheless, that such license or licenses respectively, shall not exceed the term of — years, from the time of granting the same; and that the said A. B. and C. D. respectively, do take only the usual and accustomed fines, and do conform in all other respects to the custom of the said manor, in relation to the like grants or licenses.

(Proviso in a will, authorising trustees to grant leases of copyholds, under similar restrictions to those previously imposed with respect to freeholds).

Provided always, and my will is, that it shall be lawful for the said A. B. and C. D., and the survivor of them, his heirs and assigns, by and with the consent of the lord or lady, lords or ladies, of the said manor of _____, for the time being, by indenture or indentures, to demise and lease all or any part of the said customary or copyhold lands, hereditaments, and premises hereinbefore devised, for such and the like term or terms of years, in possession, and not in reversion, or by way of future interest, and under and subject to the like restrictions and conditions, as I have hereinbefore directed and provided, with respect to the freehold estates, adjoining or contiguous to the same customary or copyhold hereditaments respectively; *provided nevertheless*, that the person or persons beneficially entitled to the rents and profits of the said cus-

tenancy or copyhold hereditaments, in possession, for the time being, if he, she, or they, shall have attained the age of 21 years, shall signify his, her, or their consent and approbation to every such lease, so to be granted as aforesaid, by some writing or writings under his, her, or their hand and seal, or hands and seals, to be attested by two or more credible witnesses.

(Lease by trustees and the cestui que trusts, to commit a forfeiture of copyholds, in order to bar an estate tail, according to the custom of the manor.) (134).

This indenture, made the ____ day of ____, &c. between R. S. of &c., and T. W. of &c. [*the trustees*], of the first part, I. K. of &c. [*equitable tenant for life*], of the second part, I. L. of &c. and E. L. [*the equitable tenant in tail in remainder*], the wife of the said I. L., of the third part, and Y. Z. of &c., of the fourth part; witnesseth, that to the intent that a voluntary forfeiture may be committed, and a seizure be made of the messuages, lands, and hereditaments, hereinafter described, with their appurtenances, according to the custom of the manor of ____, in the county of ____, in order to dock, bar, and extinguish the

(134) See *Ante*, pt. 1. pa. 69. &c.

It is usual in these cases for the homage to present the lease creating the forfeiture, in the terms of the subjoined precept, and to enter on the Court Rolls such presentment, and also a presentment of the precept and the bailiff's return, and that proclamation was thereupon made for the late tenant,

or other person who could shew title, to come into court and pay a fine, who should be heard: but that no person appeared, "*wherefore default is recorded*:" and the copy of these presentments is called the *inquisition* of the homage. The lands are afterwards regranted according to the desire of the parties.

estate in tail general, to which the said E. L. is now equitably entitled, of and in the same hereditaments, and all remainders and reversions thereupon expectant or depending, and that an estate by copy of court roll, according to the custom of the said manor, may be re-granted to and vested in the said R. S. and T. W., and their heirs, upon and for the trusts, intents, and purposes hereinafter expressed, and in consideration of the sum of 10s. a piece of lawful money of Great Britain, to the said R. S., T. W., I. K., and I. L., and E. L. his wife, in hand paid by the said Y. Z., at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and also for and in consideration of the rent and reservations hereinafter contained, and for divers other good causes and considerations, the said R. S., T. W., I. K., and I. L., and E. L. his wife, hereunto especially moving, they the said R. S. and T. W., and the said I. K. and I. L., and E. L. his wife (she the said E. L., being first examined separately and apart from her said husband, by A. B. of &c., deputy steward for that purpose and turn only, duly constituted and appointed by J. S., chief steward of the said manor, by and under a certain letter of attorney, bearing date the ____ day of ____, (135) and freely and voluntarily consenting thereto), have and each and every of them hath demised, leased, granted, and to farm letten, and by these presents do, and each and every of them doth, demise, lease, grant, and to farm let, unto the said Y. Z., his executors, administrators, and assigns, All &c., with their and every of their appurtenances, to have and to hold the said messuages, lands, and all and singular other the hereditaments and premises hereinbefore described, and hereby demised and leased,

or intended so to be, with their appurtenances, unto the said Y. Z. his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during, and until the full end and term of seven years thence next ensuing, and fully to be complete and ended: Yielding and Paying therefore yearly and every year during all the said term unto the said R. S. and T. W., their heirs and assigns, the yearly rent or sum of five shillings, on the feast day of the birth of our Lord Christ, clear of all taxes and deductions whatsoever. And it is hereby declared and agreed, that the forfeiture intended to be committed by this present demise or lease, is for the purpose, and to the intent, to bar such the equitable estate tail of the said E. L. as aforesaid, and all remainders and reversions thereupon expectant or depending, of and in the aforesaid customary or copyhold messuages, lands, hereditaments, and premises, and that the same premises may be re-granted to and vested in the said R. S. and T. W., their heirs and assigns, upon the trusts intents, and purposes expressed and declared in an indenture, bearing date &c., and made between &c., (other than the trust for the benefit of the said E. L., and the heirs of her body, and the subsequent trusts therein contained), and subject thereto, upon and for the trusts, intents, and purposes expressed and declared concerning the same premises, in and by an indenture bearing date &c., and made between &c. (being the settlement executed previous to and in contemplation of the marriage then intended and since had and solemnized between the said I. L., and the said E. L., now his wife.) In witness, &c.

[(*Precept for seizure by reason of the above forfeiture.*)]

The manor of _____ } To W. Y. bailiff of the court of
in the county of _____ } the said manor.

Whereas at a general court baron or customary court,

held this day for the said manor of —, it is found and presented by the homage, that R. S. and T. W., I. K. and I. L., and E. his wife, by their indenture of demise and lease duly executed, bearing date &c., and in consideration of the sum of 10s. a piece, in hand paid by Y. Z. of &c., and for other the considerations in the same indenture expressed, did demise, lease, grant, and to farm let unto the said Y. Z., All &c., with their appurtenances, to hold unto the said Y. Z., his executors, administrators, and assigns, from the day next before the day of the date of the same indenture of lease, for and during and unto the full end and term of seven years, thence next ensuing, and fully to be complete and ended; by reason whereof all and singular the said messuages, lands, hereditaments, and premises, being respectively customary or copyhold hereditaments, lying within and holden of the said manor, have become forfeited to the lord of the same manor, and ought to be seized to his use.

These are, therefore, to command you, the said W. Y., that you forthwith take with you two customary or copyhold tenants of the said manor, and enter into and upon the aforesaid messuages, lands, hereditaments, and premises, or some part thereof, in the name of the whole, and seize the same into the hands of the lord of the said manor, according to the custom and usage thereof, and that you thereupon make return to me of this precept, together with the names of the tenants in whose presence you make such seizure, and the clear yearly value of the premises. Given under my hand and seal this — day of —, in the year of our Lord —, J. S. steward.

(The bailiff's return indorsed.)

By virtue of the within written precept to me directed, I have, in the presence of C. D. and E. F., two custom-

try or copyhold tenants of the manor of _____, within mentioned, seized all and singular the within described messuages, lands, and hereditaments into the hands of the lord of the said manor, according to the custom and usage thereof, as commanded by the same precept. And I do hereby certify, that the aforesaid premises are of the yearly value of £_____, or thereabouts.

W. Y. bailiff,]

(Deed of Enfranchisement.)

This indenture made the ____ day of &c., between A. Z. of &c., lord of the manor of _____, in the county of _____, of the one part, and C. D. of &c., one of the copyhold tenants of the aforesaid manor, of the other part. Whereas the said A. Z. is seized of and well entitled to the said manor of _____, for an estate of inheritance in fee-simple, in possession, free from all incumbrances. And whereas the said C. D., at a court baren or customary court holden for the aforesaid manor, on the ____ day of _____, was admitted tenant, on the surrender of E. F. of &c., to all and singular the copyhold messuages, lands, and hereditaments hereinafter described, and intended to be hereby granted, released, and enfranchised, with their appurtenances, to hold the same unto him the said C. D., and his heirs, by copy of court roll, at the will of the lord, according to the custom of the manor of _____ aforesaid, [by and under the payment of the ancient yearly rent of £_____, and the performance of all other the duties and services due and of right accustomed for and in respect of the same copyhold hereditaments and premises.] And whereas the said C. D. hath contracted and agreed with the said A. Z., for the enfranchisement of the said copyhold messuages, lands, and hereditaments hereinafter described, [subject as hereinafter mentioned], at or for the

price or sum of £———. Now this indenture witnesseth, that in pursuance and performance of the said recited contract, or agreement, and for and in consideration of the sum of £———, of lawful money of the united kingdom of Great Britain and Ireland, current in England, unto the said A. Z., in hand well and truly paid by the said C. D., at or before the sealing and delivery of these presents, the receipt whereof the said A. Z. doth hereby acknowledge, and of and from the same, and every part thereof, doth acquit, release, exonerate, and discharge the said C. D., his heirs, executors, administrators, and assigns, and every of them for ever by these presents: He the said A. Z. hath granted, bargained, sold, aliened, released, enfranchised and confirmed, and by these presents, doth grant, bargain, sell, alien, release, enfranchise, and confirm unto the said C. D., (in his actual possession now being, by virtue of a bargain and sale to him thereof made by the said A. Z., in consideration of 5s., by indenture bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession), (136) and to his heirs and assigns, All &c.; together with all out-houses, ways, &c., to the said messuages, lands, hereditaments and premises belonging, or in anywise appertaining, or therewith used, occupied, or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member thereof or any part thereof: And the reversion and reversions, remain-

(136) It is usual and more correct to effect an enfranchisement by the ordinary mode of conveying freehold property, but a re-

lease by the lord to the copyholder, of all seigniorial rights, will alone be sufficient. *Ante*, pt. I. pa. 616. I Watk. 366.

der, and remainders, yearly and other rents, issues, and profits thereof: And all the estate, right, title, interest, freehold, inheritance, use, trust, benefit, property, power, claim, and demand whatsoever, of the said A. Z., in, to, or out of the same premises, and every part thereof, [save and except and reserving unto the said A. Z., his heirs and assigns, out of this present grant, release, and assurance, the aforesaid yearly rent of £ — — —, the same to be for ever hereafter paid to the said A. Z., his heirs and assigns, as a free rent, and to be issuing and payable out of the said hereditaments and premises and every part thereof, at such times and in such manner as the same is now due and accustomed to be paid; and also save and except, and reserving in like manner as aforesaid, all coal mines, veins, and seams of coal, and all other mines, metals, and minerals whatsoever, and all quarries of stone, with full liberty and power for the said A. Z., his heirs and assigns, and his and their workmen, servants, and agents, at his and their free will and pleasure, to search for, dig, work, and carry away the same, and for the better working the same mines and quarries to erect furnaces, engines, smelting houses, and other requisite buildings, and to make, lay down, and continue any rail-way, and to make drains, sluices, and cuts, and do every other act necessary or expedient for raising and carrying away all such coals, metals, minerals, and stone, doing as little injury as may be to the soil of the said copyhold premises, and making a reasonable compensation for the damage which may be sustained by the owners or occupiers of the same premises, by reason of the exercise of the privilege hereby excepted and reserved: And further also, save and except, and reserving in like manner as aforesaid, such free liberty of hunting, fishing, and fowling, and all such deodands,

waifs, estrays, and other royalties, privileges, liberties, franchises, and seigniorial rights and immunities, not hereby expressly granted, released and extinguished, as have been at any time heretofore exercised or enjoyed by the said A. Z., or any of his ancestors or predecessors, lords of the aforesaid manor, and as fully, to all intents and purposes, as the said A. Z., his heirs or assigns could or might have used, exercised, or enjoyed the same, if these presents had not been made and executed], *to have and to hold* the said messuages, lands, and all and singular other the hereditaments and premises mentioned or intended to be hereby granted, released, and enfranchised, with their and every of their appurtenances, [except as hereinbefore is excepted] unto the said C. D., his heirs and assigns, to the use and behoof of the said C. D., his heirs and assigns for ever; freed and absolutely acquitted, exonerated, and discharged, henceforth and for ever hereafter, of and from all and all manner of customary fines, heriots, rents, [except as is hereinbefore mentioned], fealty, suit of court, amercements, forfeitures, and other customary payments, duties, services, and penalties whatsoever, which by or according to the custom of the manor of _____ aforesaid, the said messuages, lands, hereditaments, and premises hereinbefore described, or any of them, are, or is, or have, or hath been subject, or liable to, or charged with, or which would otherwise be payable, or to be done and performed to the lord or lady, lords or ladies, for the time being, of the said manor of _____, for or in respect of the same hereditaments and premises, as copyhold holden of the aforesaid manor. [Yielding, Paying, and rendering, nevertheless, unto the said A. Z., his heirs and assigns for ever, the said yearly quit or chief rent of £_____, (heretofore payable in respect of the said here-

ditaments and premises as copyhold, held of the aforesaid manor), at or upon the feast day of Saint Michael the Archangel, in every year, clear of all taxes and deductions whatsoever, the first payment to begin and be made on the feast day of Saint Michael the Archangel, now next ensuing; and yielding, rendering and performing such and the like suit of court, at the court baron of the said A. Z., his heirs and assigns, to be holden from time to time for the said manor of —, and other services, as other the freehold tenants are subject and liable to do and perform, in respect of their estates lying within and holden of the same manor. And the said C. D. for himself, his heirs, executors, administrators and assigns, doth hereby grant, covenant, promise, and agree with and to the said A. Z., his heirs and assigns, that in case the said yearly rent hereby reserved, shall at any time or times hereafter be in arrear and unpaid, either in part or in the whole, or in case the said C. D., his heirs or assigns, shall neglect or refuse to do and perform such suit and services as are hereinbefore also reserved, or intended so to be, then, and in any or either of the said cases, it shall be lawful for the said A. Z., his heirs and assigns, from time to time, to exercise and pursue such remedies by amercement, distress, action or suit, at law or in equity, or otherwise howsoever, for compelling payment and performance of the same rent, suit, and services respectively, as the said A. Z., his heirs or assigns, is, or may be authorised, or entitled to exercise and pursue, by reason of any neglect or refusal, by or on the part of other the freehold tenants of the said manor, to pay the rents, or perform the suits, or services, which they respectively are subject and liable to pay and perform, in respect of their estates

lying within and holden of the aforesaid manor] (137). Provided always, and it is hereby declared to be the true intent and meaning of the said parties hereto, that nothing in these presents contained is meant to extend to the enfranchisement of, or shall be deemed, construed, or adjudged to enfranchise, any part or parts of the copyhold hereditaments lying within and holden by the said C. D. of the said manor of _____, (other than and except the messuages, lands, hereditaments and premises hereinbefore described), or to acquit, release, or discharge the same premises, (other than and except as aforesaid), from any fines, heriots, rents, fealty, suit of court, amercements, forfeitures, payments, duties, services, or penalties which, by or according to the custom of the aforesaid manor, the same premises have at any time heretofore been subject or liable to, or charged with, or which have been or ought to have been paid, done, or performed, for or in respect of the same premises, as copyhold, holden of the manor of _____aforesaid. And this indenture also witnesseth, that for the considerations aforesaid, and in order to preserve to the said C. D., his heirs and assigns, all such rights of common in, upon, and over the waste lands of the manor of _____aforesaid, as he the said C. D., or any of his ancestors or predecessors, hath or have heretofore used and enjoyed, as belonging or appurtenant to the messuages, lands, and hereditaments, hereinbefore described, notwithstanding the enfranchisement of the same respective

(137) By omitting the clauses between brackets, here and in pp. 223, 225, and 226, (by which mines, &c. are excepted out of the

grant, and rent and suit of court reserved to the lord), this precedent will serve for a more ordinary deed of enfranchisement.

hereditaments (188), he the said A. Z., hath granted and confirmed, and by these presents doth grant and confirm unto the said C. D., his heirs and assigns for ever, all such commonage and right or title to common, of what nature or kind soever, in, upon, and over all or any of the wastes, commons, and commonable lands, of or belonging to the manor of _____ aforesaid, as he the said C. D. immediately previous to the execution of these presents, or as any of his ancestors or predecessors, held, possessed or enjoyed, in respect of, and as appurtenant or belonging to all or any part of the messuages, lands, hereditaments and premises, mentioned or intended to be hereby enfranchised, and the freehold and inheritance of all such commonable rights as aforesaid, in as large, ample, and beneficial manner, to all intents and purposes, as he the said C. D., or any of his ancestors or predecessors hath or have heretofore used and exercised, all or any of the said rights or privileges, or as he, or his customary heirs, could or might have used and exercised the same, if the aforesaid messuages, lands, hereditaments and premises had not been enfranchised. And the said A. Z. for himself, his heirs, executors, and administrators, doth covenant, promise, grant, and agree, with and to the said C. D., his heirs and assigns, by these presents, in manner following, (that is to say), that (for and notwithstanding any act, deed, matter, or thing whatsoever by the said A. Z., or any of his ancestors, at any time heretofore made, done, committed, executed, or wittingly suffered to the contrary), he the said A. Z., now at the time of the sealing and delivery of these presents, is and standeth lawfully and rightfully seized of the aforesaid manor of _____, for an estate of inheritance in fee-

simple, in possession, and hath in himself good right, full power, and absolute authority to grant, release, and enfranchise all and singular the said messuages, lands, hereditaments and premises hereinbefore granted, released, and enfranchised, or intended so to be, with their appurtenances, in manner aforesaid, and according to the true intent and meaning of these presents. And moreover, that it shall and may be lawful to and for the said C. D., his heirs and assigns, from time to time, and at all times for ever hereafter, peaceably and quietly to have, hold, and enjoy the freehold and inheritance of all and singular the said messuages, lands, hereditaments and premises, mentioned or intended to be hereby granted, released, and enfranchised, with their appurtenances, for his and their own proper use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption, or disturbance whatsoever, of, from, or by the said A. Z., or his heirs, or any person or persons lawfully or equitably and rightfully claiming, or to claim, by, from, under, or in trust for him, or any of his ancestors; and that free and clear, and freed and absolutely acquitted, exonerated and discharged, or otherwise by the said A. Z., his heirs, executors and administrators, well and effectually saved, defended, kept harmless and indemnified, of, from, and against all former and other gifts, grants, bargains, sales, leases, mortgages, rents, jointures, dowers, settlements, uses, trusts, wills, entails, statutes, recognizances, judgments, extents, executions, and all other estates, titles, troubles, charges, and incumbrances whatsoever, had, made, done, committed, executed, or wittingly suffered, or consented unto by the said A. Z., or any of his ancestors, or any person or persons claiming by, from, through, under, or in trust for him, them or any of them, or by, or through his, their, or

any of their acts, means, default, privity, consent, or procurement. And further, that the said A. Z., and his heirs, and all and every persons and person whomsoever, having or lawfully or equitably claiming or to claim any estate, right, title, trust, or interest, in, to, or out of the aforesaid manner of ———, by, from, through, under, or in trust for him, or any of his ancestors, shall and will from time to time, and at all times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said C. D., his heirs or assigns, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered and executed, all and every such further and other acts, deeds, conveyances, and assurances in the law whatsoever, for the further better and more perfectly and absolutely enfranchising all and singular the said messuages, lands, hereditaments and premises hereinbefore granted, released and enfranchised, or intended so to be, with their appurtenances, be the same by fine or fines, common recovery, or common recoveries, or any other matter of record, or otherwise howsoever, as by the said C. D., his heirs or assigns, or his or their counsel learned in the law, shall be lawfully and reasonably devised or advised and required, so as such further assurances contain in them no further or other covenant or warranty, than against the person or persons making and executing the same, and his or their own heirs' and ancestors' acts and deeds respectively, and so as the party or parties required to make and execute such further assurance or assurances, be not compelled or compellable, for the purpose thereof, to go or travel from his or their usual place or places of abode. And lastly, that he the said A. Z., his heirs or assigns, shall and will, from time to time and at all times hereafter, upon reasonable notice, and at the

request, costs, and charges of the said C. D., his heirs or assigns, (unless prevented by fire or other inevitable accident), produce and shew forth, or cause and procure to be produced and shewn forth, unto him or them, or to his or their counsel, attornies, solicitors, or agents, or in any court or courts of law or equity, or upon any motion, petition, examination, commission, trial, or hearing, or otherwise as occasion shall require, all or any of the deeds, evidences and writings specified in the schedule hereunder written, for the manifesting, evidencing, maintaining, defending, and proving the title, estate, right, interest, property and possession of the said C. D., his heirs and assigns, in and to the freehold and inheritance of the said messuages, lands, hereditaments and premises mentioned or intended to be hereby granted, released, and enfranchised, or any of them. In witness, &c.

(The schedule above referred unto.)

(Deed of Enfranchisement, under a power in a marriage settlement.)

This indenture of three parts, made the ____ day of &c., between A. B. of &c., and C. D. of &c., [*the trustees for sale and enfranchisement,*] of the first part, E. F. of &c., [*the tenant for life in possession,*] and G. his wife, of the second part, and H. H. of &c. [*the copyholder,*] of the third part. Whereas by virtue of indentures of lease and release, bearing date &c., and made between the said E. F. of the first part, the said G. F., now the wife of the said E. F., (by her then name and description of G. G., of &c. spinster,) of the second part, the said A. B. and C. D. of the third part, and I. K. and L. M. [*trustees of a term of years for securing portions, &c.*] of the

fourth part, (being the settlement made previous to and in contemplation of the marriage then intended, and which was soon afterwards duly had and solemnized between the said E. F. and G. F. his wife), the manor of _____ in the county of _____, with its rights, members, and appurtenances, was (together with other manors and hereditaments), limited, settled, and assured, (from and after the solemnization of the said marriage between the said E. F. and G. F. his wife), to the use of the said E. F. and his assigns, for the term of his natural life, without impeachment of waste, with remainder to the use of the said A. B. and C. D., and their heirs, during the life of the said E. F., in trust to preserve contingent remainders, with remainder to the use and intent to secure to the said G. F. and her assigns, for her life, the jointure annuity therein mentioned, and in such manner as therein is expressed, and subject thereto, to and for the several uses, intents, and purposes, upon the several trusts, and with, under, and subject to the several powers, provisoes, limitations, declarations, and agreements in the said indenture of release, limited, declared, expressed, and contained, of and concerning the same estates respectively, and with the ultimate limitation or reversion, to the use of the right heirs of the said E. F. for ever. And in which same indenture of release was contained, (among other powers or provisoes,) the usual powers of leasing, and of sale and exchange, and also a power or proviso, whereby it was agreed and declared, by and between all the parties thereto, that it should and might be lawful to and for the said A. B. and C. D., and the survivor of them, or his heirs, at any time or times thereafter, during the life of the said E. F., with the consent and approbation of the said E. F. and G. his wife, or of the said E. F. alone, if he survived his said wife, (to be testified by some writ-

ing, under their or his hands and seals, or hand and seal, and to be attested by two or more credible witnesses), to enfranchise, and for that purpose to grant, bargain, sell, release, and confirm all or any of the messuages, &c., holden by copy of court roll of all or any of the manors mentioned or intended to be thereby granted and released, for such price or prices in money as should be thought reasonable; and upon payment of the money to arise by any such enfranchisement or enfranchisements, to sign and give a proper receipt, or proper receipts, for the consideration money of such enfranchisement or enfranchisements, which receipt or receipts, respectively, should be a sufficient discharge to any person or persons to whom such enfranchisement or enfranchisements, respectively, should be made, for so much money as should be therein expressed or acknowledged to be received; and that the person or persons paying the consideration money for any such enfranchisement, his, her, or their heirs, executors, administrators, or assigns, should not afterwards be bound to see to the application of the same monies, or be responsible for the loss, misapplication or non-application thereof, or any part thereof. And it was by the reciting indenture of release and settlement further agreed and declared, that when any of the said premises should be enfranchised, and such proper receipt be given for the consideration money of such enfranchisement, the freehold of all and every the messuages, farms, lands, tenements, and hereditaments so enfranchised, should be and remain for ever from thenceforth freed and absolutely discharged, of and from all and every the uses, trusts, limitations, powers, provisoes, declarations and agreements in and by the said indenture of release and settlement, limited, declared, or expressed; and then, and from thenceforth, the same indenture, and the grant

and release thereinbefore contained, should be and enure, as to, and concerning the hereditaments and premises so to be enfranchised, to the only use and behoof of the person or persons to whom such enfranchisement or enfranchisements should be respectively made, and of his, her, and their heirs and assigns for ever. And it was thereby further agreed and declared, that upon every such enfranchisement as aforesaid, it should be lawful for the said A. B. and C. D., and the survivor of them, and his heirs, with such consent and approbation, and so testified as aforesaid, to grant, limit, and appoint unto and to the use of the person or persons to whom any such enfranchisement should be made, and to his, her, or their heirs and assigns, all such right of common in and over the wastes of the manor or respective manors, whereof such copyhold hereditaments should be respectively holden; as belonged to or was held and enjoyed by the person or persons so enfranchising, immediately previous to the execution of the deed or deeds whereby such enfranchisement should be made, or as any of his, her, or their ancestors or predecessors held, possessed, or enjoyed, in respect of, or as appurtenant and belonging to the hereditaments to be enfranchised as aforesaid; and the freehold and inheritance of all such commonable rights, to the intent to preserve or restore and confirm the same rights, notwithstanding the union of the freehold with the copyhold interest of and in the same hereditaments respectively (139). And whereas, at a court holden for the manor of _____ aforesaid, on the _____ day of _____, all and singular the lands and hereditaments hereinafter described, with their appurtenances, were surrendered into the hands of the lord of the same manor, according

to the custom thereof, to the use of the said H. H., his heirs and assigns for ever; and at the same court seizin was granted by the lord to the said H. H. of the same customary or copyhold hereditaments, to hold to him the said H. H. and his heirs, by copy of court roll, at the will of the lord, according to the custom of the said manor of _____. And whereas the said A. B. and C. D., with the consent and approbation of the said E. F. and G. his wife, (testified by this deed or instrument in writing, sealed and delivered by them in the presence of and attested by the two credible persons whose names are hereon indorsed, as witnesses to the sealing and delivery hereof, by them the said E. F. and G. his wife), did lately contract and agree with the said H. H. for the enfranchisement of the said customary or copyhold lands and hereditaments hereinafter described, at or for the price or sum of £_____. Now this indenture witnesseth, that in pursuance and performance of the said recited contract, and for and in consideration of the sum of £_____, of lawful money of Great Britain, to the said A. B. and C. D., in hand well and truly paid by the said H. H. at or before the sealing and delivery of these presents, the receipt whereof the said A. B. and C. D. do hereby acknowledge, and of and from the same, and every part thereof, do acquit, release, and discharge the said H. H., his heirs, executors, administrators, and assigns, and every of them, for ever, by these presents: They the said A. B. and C. D., by virtue, and in exercise of the said power or authority, in this behalf, mentioned and contained in the said recited indenture of release and settlement, and by and with the consent and approbation of the said E. F. and G. his wife, (testified as aforesaid), and by force of all and every other powers and authorities, power and authority, to the said A. B. and C. D. belong-

ing, or in anywise enabling them hereunto, have enfranchised, limited, and appointed, and by these presents do enfranchise, limit, and appoint; and the said E. F. for the consideration aforesaid, and also in consideration of the sum of 10*s.* of lawful money aforesaid, to him in hand paid by the said H. H. at or before the execution hereof, the receipt whereof is hereby acknowledged, and according to the estate and interest of him the said E. F., hath granted, bargained, sold, released, enfranchised, and confirmed, and by these presents doth grant, bargain, sell, release, enfranchise, and confirm unto the said H. H. his heirs, and assigns, All &c.; together with all ways &c.; and the freehold and inheritance of the same premises, and the reversion &c., and all the estate &c. of the said E. F., in, to, or out of the same premises and every part thereof, *to have and to hold* the said lands, hereditaments, and all other the premises mentioned or intended to be hereby enfranchised, limited, and appointed, granted, released, or otherwise assured, with their appurtenances, unto and to the use of the said H. H. his heirs and assigns for ever, freed and absolutely acquitted, exonerated, and discharged, henceforth and for ever hereafter, of and from all and all manner of customary fines, heriots, rents; fealty, suit of court, amercements, forfeitures, and all other customary payments, duties, services, and penalties whatsoever, which, by or according to the custom of the manor of _____ aforesaid, the said lands, hereditaments, and premises hereinbefore described, or any of them, are or is, or have or hath been subject or liable to, or charged with, or which would otherwise be payable, or to be done and performed to the lord or lady, lords or ladies, for the time being, of the said manor of _____, for or in respect of the same hereditaments and premises; as copyhold holden of

the aforesaid manor. [If H. H. should continue a copyholder of the manor in respect of other lands, it will be proper to add a proviso or agreement similar to that in p. 228, *ante*.] And this indenture further witnesseth, that for the considerations aforesaid, and in order to preserve to the said H. H., his heirs and assigns, all such right of common in and over the wastes of the manor of _____ aforesaid, as he the said H. H., or any of his ancestors or predecessors, hath or have heretofore used and enjoyed, as belonging or appurtenant to the lands and hereditaments hereinbefore described, notwithstanding the enfranchisement of the same respective hereditaments; they the said A. B. and C. D., by force and virtue, and in exercise of the power or authority in this behalf mentioned and contained in the said recited indenture of release and settlement, and of all and every other powers and authorities, power and authority, enabling them hereunto, and with the like consent and approbation of the said E. F. and G. his wife, (testified as aforesaid), and also the said E. F., according to his estate and interest, have, and every of them hath, granted, limited, and appointed and confirmed, and by these presents do, and every of them doth, grant, limit, appoint, and confirm, unto the said H. H., his heirs and assigns for ever, all such commonage and right or title to common, of what nature or kind soever, in, upon, and over all or any of the wastes, commons, and commonable lands of or belonging to the manor of _____ aforesaid, as he the said H. H. immediately previous to the execution of these presents, or as any of his ancestors or predecessors, held, possessed or enjoyed, in respect of, or as appurtenant and belonging to, the lands, hereditaments, and premises mentioned or intended to be hereby enfranchised; and the freehold and inheritance of all such commonable rights as aforesaid, in as large, ample,

and beneficial manner, to all intents and purposes, as he the said H. H., or any of his ancestors or predecessors, hath or have heretofore used and exercised all or any of the said rights or privileges, or as he, or his customary heirs, could or might have used and exercised the same, if the aforesaid lands, hereditaments, and premises had not been enfranchised. And the said A. B. and C D., for themselves respectively, their respective heirs, executors, and administrators, but not jointly, or the one for the other of them, or the heirs, executors, administrators, acts or deeds of the other of them, do hereby covenant and declare, with and to the said H. H., his heirs and assigns, that they the said A. B. and C. D., have not, nor hath either of them, at any time heretofore, made, done, committed, executed, or wittingly suffered, or consented unto any act, deed, matter, or thing whatsoever, whereby or by means whereof, they the said A. B. and C. D. can or may be prevented or hindered from exercising the said recited power of enfranchisement, mentioned and contained in the said indenture of release and settlement, of the ____ day of _____, in manner aforesaid, and according to the true intent and meaning of these presents. And the said E. F., for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, with and to the said H. H. his heirs and assigns, by these presents, in manner following, (that is to say), that it shall and may be lawful to and for the said H. H., his heirs and assigns, from time to time and at all times for ever hereafter, peaceably and quietly to have, hold, and enjoy the freehold and inheritance of all and singular the said lands, hereditaments and premises, mentioned or intended to be hereby enfranchised, limited, and appointed, granted, released, or otherwise assured, with their appurtenances, for his and their own proper use

and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption, or disturbance whatsoever, of, from, or by the said E. F., or his heirs, or any person or persons lawfully or equitably, and right-fully claiming or to claim by, from, under, or in trust for him or them; and that free and clear, and freed and absolutely acquitted, exonerated and discharged, or otherwise by the said E. F., his heirs, executors, and administrators, well and effectually saved, defended, kept harmless and indemnified of, from, and against all former and other gifts, grants, bargains, sales, leases, mortgages, rents, jointures, dowers, settlements, uses, trusts, wills, intails, statutes, recognizances, judgments, extents, executions, and all other estates, titles, troubles, charges, and incumbrances whatsoever, had, made, done, committed, executed, or wittingly suffered or consented unto by the said E. F., or any person or persons claiming by, from, through, under, or in trust for him, or by or through his or their acts, means, default, privity, consent, or procurement. And further that the said E. F., and his heirs, and all and every persons and person having or lawfully or equitably claiming or to claim any estate, right, title, trust, or interest in, to, or out of the aforesaid manor of _____, by, from, through, under, or in trust for him or them, shall and will from time to time and at all times hereafter, upon the reasonable request, and at the proper costs and charges in the law of the said H. H., his heirs or assigns, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, and executed, all and every such further and other acts, deeds, conveyances, and assurances in the law whatsoever, for the further, better, and more perfectly and absolutely enfranchising all and singular the said lands, hereditaments and premises

herebefore enfranchised, limited, and appointed, granted, released, or otherwise assured, or intended so to be, with their appurtenances, be the same by fine or fines, common recovery, or common recoveries, or any other matter of record, or otherwise howsoever, as by the said H. H. his heirs or assigns, or his lawful counsel learned in the law, shall be lawfully and reasonably devised, or advised and required. And lastly, that he the said E. F., his heirs or assigns, shall and will from time to time, and at all times hereafter, upon reasonable notice, and at the request, costs, and charges of the said H. H., his heirs or assigns, (unless prevented by fire or other inevitable accident), produce and shew forth, or cause and procure to be produced and shewn forth, unto him or them, or to his or their counsel, attornies, solicitors, or agents, or in any court or courts of law or equity, or upon any motion, petition, examination, commission, trial, or hearing, or otherwise, as occasion shall require, all or any of the deeds, evidences, and writings specified in the schedule hereunder written, for the manifesting, evidencing, maintaining, defending and proving the title, estate, right, interest, property, and possession of the said H. H., his heirs and assigns, in and to the freehold and inheritance of the said lands, hereditaments and premises hereinbefore described, and mentioned or intended to be hereby enfranchised, limited, and appointed, granted, released, or otherwise assured, or any of them: Provided always, and it is hereby agreed and declared by and between the said H. H., and the said E. F., that in case the said E. F., his heirs, executors, or administrators, shall at his or their costs and charges, at any time hereafter, procure the person or persons for the time being entitled to the custody of the aforesaid deeds, evidences, and writings, to enter into a deed of covenant with the said H. H., his heirs

and assigns, of the like tenor and import as the covenant last hereinbefore contained, and shall deliver over the same deed of covenant unto him the said H. H., his heirs or assigns: then and in such case the said last hereinbefore mentioned covenant shall cease, determine, and be void, to all intents and purposes whatsoever. In witness, &c.

(The Schedule above referred unto.)

EXTRACTS

FROM

Various Acts of Parliament

RELATING TO

COPYHOLDS.

(140) 1 R. III. c. 4.

“Of what credit and estate those Jurors must be which shall be impanelled in the Sheriff’s Turn.”

This statute, after noticing that great inconveniencies and perjuries daily happened, “by untrue verdicts given “in inquisitions and inquiries before sheriffs in their “turns;” enacted, that no bailiff nor other officer should from thenceforth return or impanel any such person, in any shire of England, to be taken or put in or upon any such inquiry in any of the said turns, but such as were of good name and fame, and had lands and tenements of freehold, within the same shires, to the yearly value of 20s. at the least, *or else lands and tenements holden by custom of manor, commonly called copyhold, within the said shires, to the yearly value of 20s. 8d. over all charges, at the least.*

(140) See Co. Cop. s. 52. Tr. 190-1.

1 ED. VI. c. 14.

"The act for Chantries Collegiate."

This stat. gives to the King all colleges, chantries &c., in *esse* within five years before the first day of the then present parliament, and not then in the King's possession, nor within the exception of the same statute, or of the act of 37 H. 8. c. 4.: and all manors &c. belonging thereto, and all manors &c. appointed to the finding of any priest to have continuance for ever.

S. 39. "Provided always, that this act, nor any thing therein contained, shall in anywise extend to any lands, tenements, possessions or hereditaments whatsoever, that any master, dean, prebendary, warden or chantry, or any stipendiary priest of any college, chantry, prebend, fraternity, guild, or any other corporations, have or held of any person or persons *by copy of court roll, or at will, according to the custom of any manor or manors*, nor give or grant any copyhold lands to the King's Highness."

S. 40. "And also provided, that the King's Highness, his heirs or successors, shall not in anywise have, hold, enjoy, or take by virtue of this act or any article therein contained, any manner of copyhold lands, tenements, possessions, or hereditaments, whatsoever they be; but that all and every of the said persons and incumbents shall have, hold, and enjoy the same during their lives, and wards their pension and yearly living, paying their rents and doing their customs and services thereof due and so customed; any thing in this act to the contrary notwithstanding."

2d & 8d ED. VI. c. 8.

"An Act for finding of Offices before Escheators."

"Where many and divers persons holding, or that have holden lands, tenements, or hereditaments, some for term of years, and some *by copy of court roll*, have been expelled, and put out of their terms and holds, by reason of inquisitions or offices founden before escheators, commissioners, and others, *containing tenures of the King in capite* (141), intituling the King to the wardship or custody of such lands or tenements, and sometime intituling the King to the same upon attainders of treason, felony, or otherwise, by reason that such leases for term of years or interest *by copy of court roll* of such persons, have not been found in such inquisitions or offices: after which expulsion, or putting out, the said persons have been without remedy for the obtaining of the said *fermes* and holds during the King's possession therein; and can have no traverse, *monstrans de droit*, nor other remedy for the same, because their said interest is but a chattel in the law, or a *customary hold*, and no estate of freehold."

S. 2. "And also where any person or persons hath any rent, common, office, fee, or other profit *apprendre*, of an estate of freehold, or for years, or otherwise, out of such lands or tenements specified in such offices or inquisitions, the said rent, common, office, fee or profit *apprendre*, not found in the same office or offices, such persons are in like manner without remedy to obtain, or have the said rent, common, office, fee, or profit *apprendre*,

(141) See 12 Car. 2. c. 24. where by copy of court roll, and reducing all tenures to free and otherwise as mentioned, ante, p. 637.
common socage, except only te-

by any traverse or other speedy mean, without great and excessive charges, during the King's interest therein by force of such inquisition or office."

S. 3. "For remedy whereof, be it enacted, by authority of this present parliament, that where any such office or inquisition is or shall be founden, omitting such titles, interests, or matters as aforesaid, that in all such cases every lessee, tenant for term of years, or *copyholder*, and every such person or persons that have or shall have any interest to any rent, common, or profit *apprendre*, for term of years, life or otherwise, out of any of the lands, tenements or hereditaments, contained in such office or inquisition, where the King, his heirs or successors, is or shall be intituled, as is aforesaid, to any such lands, tenements or hereditaments, shall have, hold, enjoy, and perceive all and every their leases and interests for term of years, or *by copy of court roll*, rents, commons, offices, fees and profit *apprendre*, in such manner, form, state and condition, as they and every of them should or might have done, in case there had been no such office or inquisition founden, and as they should or lawfully might, or ought to have done, in case such lease, *interest by copy of court roll*, rent, common, office, fee or profit *apprendre*, had been found in such office or inquisition; any law, custom, or usage to the contrary, heretofore used in such cases, in anywise notwithstanding."

5 ELIZ. c. 14.

"An Act against Forgers of False Deeds and Writings."

S. 2. Be it enacted, &c. "That if any person or persons whatsoever, after the first day of June now next

coming, upon his or their own head and imagination, or by false conspiracy and fraud with others, shall wittingly, subtilly, and falsely forge or make, or subtilly cause or wittingly assent to be forged or made, any false deed, charter, or writing sealed, *court roll*, or the will of any person or persons in writing (142), to the intent that the state of freehold or inheritance of any person or persons, of, in, or to any lands, tenements or hereditaments, freehold or *copyhold*, or the right, title, or interest of any person or persons, of, in, or to the same, or any of them, shall or may be molested, troubled, defeated, recovered or charged; or after the said first day of June, shall pronounce, publish or shew forth in evidence, any such false and forged deed, charter, writing, court roll or will, as true, knowing the same to be false and forged, as is

(142) By 2 Geo. 2. c. 25. s. 1. it is enacted, that if any person, after the 29th June, 1720, should falsely make, forge, or counterfeit, or cause or procure to be falsely made, or forged, or counterfeited, or willingly act or assist in the false making, forging or counterfeiting any *deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange, or promissory note for payment of money, or any acquittance or receipt, either for money or goods, with intention to defraud any person whatsoever, or shall utter, or publish as true, any false, forged, or coun-*

terfeited deed, will, testament, bond &c., with intention to defraud any person, knowing the same to be false, forged, or counterfeited; then every such person, being thereof lawfully convicted according to the due course of law, shall be deemed guilty of felony, and suffer death as a felon, without benefit of clergy.

The 6th section of the same act directs that it should continue for five years from 29th June, 1720, and from thence to the end of the then next session of parliament.

By 9 G. 2. c. 18. the last mentioned act, which is stated to have expired, was revived and made perpetual.

aforesaid, to the intent above remembered, and shall be thereof convicted, either upon action or actions of forge or of false deeds, to be founded upon this statute, at the suit of the party grieved, or otherwise according to the order and due course of the laws of this realm, or upon bill or information to be exhibited into the Court of the Star Chamber, according to the order and use of that court, shall pay unto the party grieved his double costs and damages, to be found or assessed in that court where such conviction shall be, and also shall be led upon the pillory in some open market town, or other open place, and there to have both his ears cut off, and also his nostrils to be slit and cut, and seared with a hot iron, so as they may remain for a perpetual note or mark of his falsehood; and shall forfeit and forfeit to the queen, our sovereign lady, her heirs and successors, the whole issues and profits of his lands and tenements during his life, and also shall suffer and have perpetual imprisonment during his life; the said damages and costs to be recovered at the suit of the party grieved as is aforesaid, to be first paid and levied of the goods and chattels of the offender, and of the issues and profits of the said lands, tenements and hereditaments of such party convicted, or of one or both of them; the said title of our said sovereign lady the queen, her heirs or successors, to the same notwithstanding."

S. 3. "And be it further enacted by the authority aforesaid, that if any person or persons, after the said first day of June, upon his or their own head or imagination, or by false conspiracy or fraud had with any other, shall wittingly, subtilly and falsely forge or make, or wittingly, subtilly, and falsely cause or assent to be made and forged, any false charter, deed or writing, to the intent that any person or persons shall or may have,

disclaim any estate or interest for term of years, of, in, or to any manors, lands, tenements, or hereditaments, not being copyholds, or any immunity in fee simple, fee tail, or for term of life, lives or years, or after the said day shall, as is aforesaid, forge, make, or cause or assent to be made, or forged, any obligation or bill obligatory, or any acquittance, release, or other discharge of any debt, account, action, suit, demand, or other things personal; or if any person or persons, after the said last day of June, shall pronounce, publish, or give in evidence, any such false and forged charter, deed, writing, obligation, bill obligatory, acquittance, release, or discharge, as true, knowing the same to be false and forged, and shall be thereof convicted by any the ways or means aforesaid: that then, he shall pay unto the party grieved his double costs and damages to be found and assessed in such court where the said conviction shall be had, and shall be also set upon the pillory in some open market town, or other open place, and there to have one of his ears cut off, and shall also have and suffer imprisonment by the space of one whole year, without bail or mainprize."

S. 4. "And be it further enacted, by the authority aforesaid, that the party and parties grieved by reason of any the offences aforesaid, shall and may, at his and their pleasure, have and sue his action of forger of false deeds upon this statute, against any the offenders in the same, by original writ out of the Queen's Highness Court of Chancery, and shall and may have like process upon the same, as in cases of trespass at the common law; or may at his pleasure take his suit against any such offenders in any the premises, by bill before the Queen's Highness, her heirs and successors, in her Court, commonly called the King's Bench, or in the Court of Exchequer;

in which suits no essoign, injunction, or protection shall be allowed for the party defendant."

S. 5. "And be it further enacted by the authority aforesaid, that if the party defendant shall be convicted for any the offences aforesaid, according to the order and form above limited, and shall have received thereupon punishment corporal according to this act; that then he shall not afterwards be impeached for the same offence."

S. 6. "And be it further enacted by the authority aforesaid, that although the party or parties plaintiff in any such action or bill to be sued, as is aforesaid, shall after verdict passed against the defendant or defendants, happen to release or discharge the judgment or execution upon the same, or otherwise suffer the same to be discontinued: that yet, nevertheless, the same release, discharge or discontinuance, shall extend only to discharge such costs and damages as the same plaintiff should have had against the defendant; and that the judges before whom the said action or suit shall be taken, shall and may proceed to judgment of and upon the residue of the said penalties and forfeitures, and to command execution upon the same; the said release, discontinuance, or other discharge had, made, done, or suffered by the party plaintiff, in anywise notwithstanding; this act or any thing therein contained to the contrary in anywise notwithstanding."

S. 7. "And be it further enacted by the authority aforesaid, that if any person or persons, being hereafter convicted or condemned of any the offences aforesaid, by any the ways or means above limited, shall after any such his or their conviction or condemnation afterwards commit, or perpetrate any of the said offences in form aforesaid; that then every such second offence or offences

shall be adjudged felony; and the parties being thereof convicted or attainted according to the laws of this realm, shall suffer such pains of death, loss and forfeiture of their goods, chattels, lands and tenements, as in cases of felony, by the common laws of this realm, ought to be lost or forfeited, without having any advantage or benefit of clergy or sanctuary: saving to every person and persons, bodies politic and corporate, their heirs and successors, other than the said offenders, and such as claim to their uses, all such rights, titles, interests, possessions, liberties of distresses, leases, rents, reversions, offices, and other profits and advantages, which they or any of them shall have at the time of such conviction or attainder, of, in, or to any the lands, tenements, or hereditaments of any such person so as is aforesaid convicted or attainted, or at any time before, in as large and as ample manner, to all intents and purposes, as if this act had never been had nor made."

S. 8. "Provided always, and be it enacted by the authority aforesaid, that any such conviction or attainder of felony, as is aforesaid, or any forfeiture by reason of the same, shall not in anywise extend to take away the dower of the wife of any such person attainted, nor to the corruption of blood, or disherison of any the heir or heirs of any such person or persons so attainted; this act or any thing therein contained, or any other statute, law, usage, custom or thing heretofore used to the contrary in anywise notwithstanding."

13 ELIZ. c. 5.

"An Act against fraudulent deeds, alienations, &c."

"For the avoiding and abolishing of feigned, covinous and fraudulent feoffments, gifts, grants, aliena-

actions, conveyances, bonds, suits, judgments, and executions, as well of lands and tenements as of goods and chattels, more commonly used and practised in these days than hath been seen or heard of heretofore, which feoffments, gifts, &c. have been and are devised and contrived of malice, fraud, covin, collusion, or guile, to the end, purpose, and intent, to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, *heriots*, mortuaries and reliefs, not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining, and chevance between man and man, without the which no commonwealth or civil society can be maintained or continued."

§. 2. Be it therefore declared, ordained, and enacted by the authority of this present parliament, that all and every feoffment, gift, grant, alienation, bargain and conveyance of lands, tenements, hereditaments, goods and chattels, or of any of them, or of any lease, rent, common, or other profit or charge out of the same lands, tenements, hereditaments, goods and chattels, or any of them, by writing or otherwise, and all and every bond, suit, judgment and execution, at any time had or made since the beginning of the Queen's Majesty's reign that now is, or at any time hereafter to be had or made, to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every of them, whose actions, suits, debts, accounts, damages, penalties, forfeitures, *heriots*, mortuaries and reliefs, by such guileful, covinous, or fraudulent devices and practices, as is aforesaid, are, shall or might be in

anywise disturbed, hindered, delayed (or defeated), nor be clearly and utterly void, frustrate, and of none effect; any pretence, colour, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

S. 3. "And be it further enacted by the authority aforesaid, that all and every the parties to such feigned, covinous or fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions and other things before expressed, and being privy and knowing of the same, or any of them; which at any time after the tenth day of June next coming shall willingly and willingly put in ure, avow, maintain, justify, or defend the same, or any of them, as true, simple, and done, or had or made, *bond fide*, and upon good consideration; or shall alien or assign any the lands, tenements, goods, leases, or other things before mentioned, to him or them conveyed as *in aforesaid*; or any part thereof; shall incur the penalty and forfeiture of one year's value of the said lands, tenements and hereditaments, leases, rents, commons, or other profits of or out of the same; and the whole value of the said goods and chattels, and also so much money as are or shall be contained in such covinous and feigned bond; the one moiety whereof to be to the Queen's Majesty, her heirs and successors; and the other moiety to the party or parties grieved by such feigned and fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, leases, rents, commons, profits, charges and other things aforesaid, to be recovered in any of the Queen's courts of record, by action of debt, bill, plaint or information, wherein no essoin, protection, or wager of law shall be admitted for the defendant or defendants; and also be-

ing thereof lawfully convicted, shall suffer imprisonment for one half year, without bail or mainprise."

[S. 6. Provides that the act shall not extend to any conveyance of lands, goods, &c. made for good consideration, *bona fide*, and without notice of such covin, fraud, or collusion.]

[*Vide* 35 Eliz. c. 2: being an act to restrain Popish Recusants to some certain places of abode. The 5th section, which relates to the forfeiture of copyholds by recusant convicts, is extracted, *ante*, pt. I. pa. 106. n. 161. See also Co. Cop s. 52. Tr. 121.]

13 ELIZ. c. 7.

"An Act touching orders for bankrupts."

S. 2. "And be it enacted by the authority aforesaid, that the Lord Chancellor of England, or Lord Keeper of the great seal of England, for the time being, upon every complaint made to him in writing, against any such person or persons being bankrupt as is before defined, shall have full power and authority, by commission under the great seal of England, to name, assign, and appoint such wise and honest discreet persons as to him shall seem good: Who, or the most part of them, by virtue of this act and of such commission, shall have full power and authority to take, by their discretions, such order and direction with the body and bodies of such person or persons, wheresoever he or she may be had, either in his or her house or houses, sanctuary or elsewhere, as well

by imprisonment of his or her body or bodies; as also with all his or her lands, tenements, hereditaments, *as well copy or customary-hold as freehold*, which he or she shall have in his or her own right, before he or she became bankrupt; and also with all such lands, tenements, and hereditaments, as such person shall have purchased or obtained for money or other recompense, jointly with his wife, children, or child; to the only use of such offender or offenders; or of or for such use, interest, right, or title, as such offender or offenders then shall have in the same, which he or she may lawfully depart withal; or with any person or persons of trust to any secret use of such offender or offenders; and also with his or her money &c., and cause the said lands, tenements &c., to be searched, viewed, rented, and appraised, to the best value they may: And by deed indented, enrolled in one of the Queen's Majesty's courts of record, to make sale of the said lands, tenements, and hereditaments, and of all deeds, writings, and evidences, touching only the same, belonging to such offender or offenders, debtor or debtors; and also of all fees, annuities, offices, goods, and chattels; or otherwise to order the same for true satisfaction and payment of the said creditors, that is to say, to every of the said creditors a portion, rate, and rate like, according to the quantity of his or their debts: And that every direction, order, bargain, sale, and other things done by the said persons, so authorised as is aforesaid, in form aforesaid, shall be good and effectual in the law, to all intents, constructions, and purposes, against the said offender or offenders, debtor or debtors, his or their wife or wives, heir or heirs, child and children, and such person and persons as by such joint purchase with the said offender or offenders, as is aforesaid, have or shall have any estate or interest in the premises; and

against all other person or persons claiming by, from, or under such offender or offenders, debtor or debtors, by any act or acts had, made, or done, after any such person shall become bankrupt, as is aforesaid; and also against the lords of the manors, whereof the said copyhold or customary lands be holden, their heirs, successors, and assigns, and every of them.

Provided always, and be it enacted by the authority aforesaid, that all and every person or persons, to whom any such sale of copyhold or customary lands or tenements shall be made, shall, before such time as they or any of them shall enter or take any possession of the lands or tenements, agree and compound with the lords of the manors of whom the same shall be sold, for such fines or pecuniaries as heretofore hath been wont and accustomed to be yielded or paid, therefor. And that upon every such agreement or composition, the said lords for the time being, in the next next term of his holden or for the said term, shall deliver unto the said purchaser or purchasers, upon request, the same copy or customary land or tenements, by the copyhold or customary manner, for such estate or interest as to them shall be sold, and reserving the ancient rents, customs, and services; but also in the same charters or tenements of the same copy or customary lands, and the copyhold or customary lands, herebefore written, shall be added, and to receive their fees accordingly.

And be it enacted, that if any person which hereafter is or shall be a bankrupt by intent of this statute,

shall convey, or procure or cause to be conveyed, to any of his children or other person or persons, any manors, lands, tenements, hereditaments, offices, fees, annuities, leases, goods, chattels, or transfer his debts into other men's names; except the same shall be purchased, conveyed, or transferred for, or upon marriage of, any of his or her children, *both the parties married being of the ages of consent*, or some valuable consideration, shall be in the power and authority of the commissioners on this behalf to be appointed, or the more part of them, to bargain, sell, grant, convey, demise, or otherwise to dispose thereof, in as ample manner as if the said bankrupt had been actually seised or possessed thereof, or the debts were in his own name, of the like estate or interest to his or their own use, at such time as he or she became bankrupt: and that every such grant, bargain, sale, conveyance, and disposition of the said commissioners, or of the greater part of them, shall be good and available to all intents, constructions and purposes in the law, against the offender or offenders, his heirs, executors, administrators and assigns, and such children and persons as shall be subject to this statute, and against all other person and persons claiming by, from, or under such offender or offenders, or such said other persons, to whom such conveyance shall be made by the said bankrupt, or by his means or procurement."

S. 17. "Provided always, and be it further enacted, that if, after any commission of bankrupts hereafter sued forth and dealt in by the commissioners, the offender happen to die before the commissioners shall distribute the goods, lands, and debts of the offenders, or any of them by force of the aforesaid statute [of 13 Eliz.], and this statute, or either of them, that then nevertheless the said commissioners shall and may in that case proceed in

execution, in and upon the said commission for and concerning the offender's goods, lands, tenements, hereditaments, and debts, in such sort as they might have done, if the party offender were living (143).

[N. B. By S. 11. of the before-mentioned act of 13 Eliz. c. 7. the commissioners were authorised to sell any hereditaments, free or copy, purchased by, or descending, or reverting to any bankrupt before his or her debts should be fully satisfied.]

21 JAC. I. c. 19.

"An Act for the further description of a bankrupt, and relief of creditors against such as shall become bankrupts, and for inflicting corporal punishment upon the bankrupts in some special cases."

S. 12. "Be it further enacted, that the said commissioners, or the greater number of them, shall have power by virtue of this act, by deed indented and inrolled, within six months after the making thereof, in some of His Majesty's Courts of Record at Westminster, to grant, bargain, sell, and convey any manors, lands, tenements, or hereditaments, whereof any bankrupt is or shall be in any ways seised of any estate in tail, in possession, reversion, or remainder, and whereof no reversion or remainder is or shall be in the King's Majesty, his heirs and successors, of the gift or provision of his Majesty, his progenitors, his heirs or successors, to any person or per-

(143) The power given to the commissioners by this clause has been held to extend to a fee simple conditional in copyholds.

Doe d. Spencer v. Clarke, B. R.

Hil. T. 1822. *Quære*, as to the validity of a sale by the commissioners after the death of a tenant in tail?

sons, for the relief and benefit of the creditors of all such bankrupts; and that all and every such grants, bargains, sales, and conveyances, shall be good and available in the law to such person or persons, and their heirs, against the said bankrupts, and against all and every the issues of the body of such bankrupts, and against all and every person and persons claiming any estate, right, title, or interest, by, from, or under the said bankrupts, after such time as such person shall become bankrupt, and against all and every other person and persons whatsoever, whom the said bankrupt, by common recovery, or other ways or means, might cut off or debar from any remainder, reversion, rent, profit, title, or possibility, into, or out of any the said manors, lands, tenements, or hereditaments."

S. 13. "And be it further enacted, that if any person that now is, or hereafter shall become a bankrupt, have heretofore granted, conveyed, or assured, or shall at any time hereafter grant, convey, or assure, any lands, tenements, hereditaments, goods, chattels, or other estate, unto any person or persons, upon condition or power of redemption at a day to come, by payment of money or otherwise; that it shall and may be lawful to and for the said commissioners or the greater part of them, before the time of the performance of such condition, to assign and appoint under their hands and seals such person or persons as they shall think fit, to make tender or payment of money, or other performance, according to the nature of such condition, as fully as the bankrupt might have done; and that the said commissioners, or the greater part of them, shall, after such tender, payment, or performance, have power to sell and dispose of such lands, tenements, hereditaments, goods, and chattels, and other estates so granted, conveyed, or assured upon condition,

to and for the benefit of the creditors, as fully as they may sell or dispose of any estate of the bankrupt.

S. 14. " Provided further, that no purchaser for good and valuable consideration (144), shall be impeached by virtue of this act, or any other act heretofore made against bankrupts, unless the commission to prove him or her a bankrupt be sued forth against such bankrupt within five years after he or she shall become a bankrupt (145).

[*Vide* 7 Jac. 1. c. 21. An Act for confirmation of decrees thereafter to be made in the Exchequer Chamber, and Duchy Court, concerning copyhold lands and tenements.]

(144) Notice of the act of bankruptcy has been held to take away the benefit of the stat. *Read v. Ward*, 2 Eq. Abr. 119. 2 Vin. Abr. 123.

(145) But by 45 Geo. 3. c. 135, it was enacted that in all cases of commissions of bankrupt thereafter to be issued, all conveyances by, all payments by and to, and all contracts and other dealings and transactions by and with any bankrupt, *bonâ fide* made or entered into more than two calendar months before the date of such commission, should, notwithstanding any prior act of bankruptcy committed by such bankrupt, be good and effectual to all intents and purposes whatsoever, in like

manner as if no such prior act of bankruptcy had been committed, provided the person or persons so dealing with such bankrupt had not, at the time of such conveyance, payment, contract, dealing, or transaction, any notice of any prior act of bankruptcy by such bankrupt committed, or that he was insolvent, [which has been held to mean a person's general inability to answer his engagements. *Per* Lord Ellenborough *Atton*, 1 Campb. 492. n.] or had stopped payment.

And the act also directed that the issuing of a commission, although afterwards superseded, *or even the striking a docket*, whether a commission should be issued

21 JAC. 1. c. 15.

“ An Act to enable Judges and Justices of the Peace to give restitution of possession in certain cases.” [See 8 Hen. 6. c. 9. 31 Eliz. c. 11.]

“ Be it enacted by the authority of this present parliament, that such judges, justices, or justice of the peace,

thereupon or not, should be deemed notice of any prior act of bankruptcy committed.

Mr. Sugden in his *Vend. and Purch.* (p. 582, 5th ed.) suggests, that the five years clause in the statute of James, is not repealed by the act of 46 Geo. 3. and, therefore, that a purchaser is not concluded by the constructive notice established by the latter act, if more than five years should have elapsed since the purchase, and a commission were then to issue against the vendor.

N. B. By the act of 49 Geo. 3. c. 121. “ to alter and amend the laws relating to bankrupts,” reciting, that by the act of 46 Geo. 3. it was (amongst other things) provided, that the striking of a docket for the purpose of issuing a commission, whether any commission should have actually issued thereupon or not, should be deemed notice of a prior act of bankruptcy for the purposes of that act, if it should appear that an act of

bankruptcy had been actually committed at the time of striking such docket; and noticing that the aforesaid provision had not been attended with the good effects which were expected therefrom: It was enacted, that the said act [of 46 Geo. 3.], so far as the same was thereinbefore recited, should be and the same was thereby repealed; And it was further enacted, that in all cases of commissions of bankrupt thereafter to be issued, all executions and attachments against the lands and tenements, or goods and chattels of the bankrupt, *bonâ fide* executed or levied more than two calendar months before the date and issuing of such commission, should be valid and effectual, notwithstanding any prior act of bankruptcy committed by such bankrupt, in like manner as if no such prior act of bankruptcy had been committed, provided the person, at whose suit such execution or attachment should have is-

as by reason of any act or acts of parliament now in force are authorised and enabled, upon inquiry, to give restitution of possession unto tenants of any estate of freehold, of their lands or tenements, which shall be entered upon with force, or from them withholden by force, shall by reason of this present act have the like and the same authority and ability from henceforth (upon indictment of such forcible entries, or forcible withholdings before them duly found) to give like restitution of possession unto tenants for term of years, *tenants by copy of court roll*, *guardians by knight service*, *tenants by elegit*, *statute merchant and staple*, of lands or tenements by them so holden, which shall be entered upon by force, or holden from them by force (146).

19 CAR. II. c. 6.

“ An Act for the redress of inconveniencies by want of proof of the deceases of persons beyond the seas, or absenting themselves, upon whose lives estates do depend.” [See also 6 Anne, c. 18.]

S. 1. “ Whereas divers lords of manors and others have used to grant estates by copy of court-roll, for one, two, or more life or lives, according to the custom of their several manors; and have also granted estates by

sued, had not at the time of executing or levying the same any notice of any prior act of bankruptcy by such bankrupt committed, or that he was insolvent, or had stopped payment: and the act provides, that the issuing of a commission of bankrupt, although

such commission be afterwards superseded, shall be deemed such notice, if it should appear that an act of bankruptcy had been actually committed at the time of issuing such commission.

(146) *Ante*, pt. 1. pa. 545.

lease for one or more life or lives; or else for years; determinable upon one or more life or lives, and it hath often happened that such person or persons, for whose life or lives such estates have been granted, have gone beyond the seas, or so absented themselves for many years, that the lessors and reversioners cannot find out whether such person or persons be alive or dead, by reason whereof such lessors and reversioners have been held out of possession of their tenements for many years, after all the lives upon which such estates depended are dead, in regard that the lessors and reversioners, when they have brought actions for the recovery of their tenements, have been put upon it to prove the death of their tenants, when it is almost impossible for them to discover the same."

S. 2. "For remedy of which mischief, so frequently happening to such lessors or reversioners, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and the Commons in this present parliament assembled, and by the authority of the same, that if such person or persons, for whose life or lives such estates have been or shall be granted as aforesaid, shall remain beyond the seas, or elsewhere absent themselves in this realm, by the space of seven years together, and no sufficient and evident proof be made of the lives of such person or persons respectively, in any action commenced for recovery of such tenements by the lessors or reversioners; in every such case the person or persons upon whose life or lives such estate depended, shall be accounted as naturally dead; and in every action brought for the recovery of the said tenements by the lessors or reversioners their heirs or assigns, the judges before whom such action shall be brought, shall direct the jury to give their

verdict as if the person so remaining beyond the seas, or otherwise absenting himself, were dead."

S. 8. "And be it further enacted, that in any such action wherein the life or death of any such person or persons shall come in question between the lessor or reversioner and tenant in possession, it shall and may be lawful for the lessor or reversioner to take exception to any of the jurors returned for the trial of that cause, that the greatest part of the real estate of any of such jurors is held by lease or copy for lives, who upon proof thereof shall be set aside, as in case of other legal challenges."

S. 5. "Provided always, and be it enacted, That if any person or persons shall be evicted out of any lands or tenements by virtue of this act, and afterwards, if such person or persons, upon whose life or lives such estate or estates depend, shall return again from beyond seas, or shall, on proof in any action to be brought for recovery of the same, be made to appear to be living, or to have been living at the time of the eviction; that then and from thenceforth, the tenant or lessee who was ousted of the same, his or their executors, administrators, or assigns, shall or may re-enter, re-possess, have, hold, and enjoy the said lands or tenements in his or their former estate, for and during the life or lives, or so long term as the said person or persons, upon whose life or lives the said estate or estates depend, shall be living; and also shall, upon action or actions to be brought by him or them against the lessors, reversioners, or tenants in possession, or other persons respectively, which since the time of the said eviction received the profits of the said lands or tenements, recover for damages the full profits of the said lands or tenements respectively, with lawful interest for and from the time that he or they

were ousted of the same lands or tenements, and kept and held out of the same by the said lessors, reversioners, tenants, or other persons who after the said eviction received the profits of the said lands or tenements, or any of them respectively, as well in the case when the said person or persons, upon whose life or lives such estate or estates did depend, are or shall be dead at the time of bringing of the said action or actions, as if the said person or persons were then living."

7 ANNE, c. 10.

" An Act for rendering more effectual the laws concerning Commissioners of Sewers."

S. 1. " Whereas by the laws now in force concerning commissioners of sewers, it is provided, that if any person or persons, being assessed or taxed to any lot or charge, for any lands, tenements, or hereditaments, within the limits of any such commission, do not pay the said lot and charge, according to the order and assignment of the commissioners, having power of the execution of the said commission, that then the said commissioners, for lack of payment of such lot and charge, may decree and ordain the said lands and tenements from the owner or owners thereof, and their heirs, and the heirs of every of them, to any person or persons, for term of years, term of life, fee simple, or fee tail, for payment of the same lot and charge, the said decrees and ordinances to be executed in such manner, as by the said laws now in force it is directed and appointed: And it is thereby provided, that the same decrees and ordinances shall bind all and every person and persons, that at the making of the same decrees had any interest in such lands, tenements, and hereditaments, in use, possession, reversion, or remainder, their

heirs and feoffees, and every of them, and shall also bind as well the lands, tenements, and hereditaments of the King of England, as all and every other person and persons, and their heirs, and such their interest, as they shall fortune to have in any lands, tenements, and hereditaments, or other casual profit, advantage, or commodity, whatsoever they be, whereunto the said laws, ordinances, and decrees, shall in any wise extend, according to the true purport, meaning, and intent of the said laws; but the said laws of sewers now in force have been found defective, in that sufficient power and authority is not thereby given to commissioners of sewers to make sale of *copyhold or customary* lands within the limits of their commission, for the causes aforesaid. For remedy whereof, be it enacted by &c., that from and after the 25th day of March, 1709, it shall and may be lawful, to and for the commissioners authorised by commission from her Majesty, her heirs, and successors, or any six or more of them, to put in execution the laws now in force concerning sewers, for non-payment of any lot or charge, assessed or charged upon any copyhold or customary lands within the limits of their commission, and by the power and authority of the said commission of sewers, to decree and ordain the said *copyhold or customary* lands so charged, from the owner or owners, and their heirs and the heirs of every of them, to any person or persons, for such estate and interest therein, as the said owner or owners thereof, or any claiming in remainder under them at the time of such decree made, had in the same copyhold lands, tenements, and hereditaments: the said decrees to be made and executed, as decrees concerning freehold lands are, by the said laws now in force, to be made and executed."

S. 2. " Provided always, that all and every person and

persons, to whom any such sale of copyhold or customary lands or tenements shall be made, shall, before such time as they or any of them shall enter or take any profit of the same lands or tenements, agree and compound with the lords of the manors, of whom the same shall be holden, for such fines or incomes as heretofore hath been most usual and accustomed to be yielded or paid therefor; and that upon every such agreement or composition, the said lord for the time being, at the next court to be holden at or for the said manors, shall not only grant to such vendee or vendees, upon request, the same copyhold or customary lands or tenements, by copy of court roll of the said manors, for such estate or interest as to them shall be so decreed or sold, and reserving the ancient rents, customs, and services; but also shall, in the same court, admit them tenants of the same copyhold or customary lands, as other copyholders of the same manors have been wont to be admitted, and to receive their fealty accordingly."

9 GEO. 1. c. 29.

"An Act to enable lords of manors more easily to recover their fines, and to exempt infants and femes covert from forfeiture of their copyhold estates, in particular cases."

S. 1. "Whereas some doubts have arisen in the law, concerning the power of lords of manors in that part of Great Britain called England, and the dominion of Wales, to seise the copyhold lands, tenements, and hereditaments, parcel of their manors, on the neglect or refusal of persons to come in and be admitted tenants of the same. Therefore, for ascertaining the law, and providing a reasonable and proper remedy for the lords

of manors to compel the admission of their tenants; Be it enacted by, &c., that where any person or persons, being under the age of one-and-twenty years, or feme or femes covert, shall, from and after the 24th day of June, 1723, be entitled, *by descent, or surrender to the use of a last will* (147), to be admitted tenant or tenants of any copyhold messuages, lands, tenements, or hereditaments, within that part of Great Britain called England, or the dominion of Wales, they the said infants or femes covert, not having been admitted thereto, and not having paid their fines, every such infant or feme covert, in their proper persons, or such feme covert by her attorney, or such infant by his or her guardian or guardians, if he or she shall have any such; and in case he or she shall have no guardian or guardians, then by his or her attorney or attornies (for which purpose such infants and femes covert shall be and are hereby empowered, by writing under his or her hand and seal respectively, to appoint an attorney or attornies on his or her behalf) shall come to and appear at one of the three next courts which shall be kept (for the keeping whereof the usual notice shall be given) for such manor or manors, whereof such messuages, lands, tenements, or hereditaments, shall be parcel, and shall there tender and offer themselves to the lord or his stewards of such courts, to be admitted tenants to all and every the said messuages, lands, tenements, and hereditaments so surrendered, descended, or come to, or to the use of every such infant or feme covert. To make which appearance, and to take such admittance in behalf of such infant or feme covert, such guardian and attorney shall be, and they are hereby

(147) See *ante*, pt. 1. pp. 222, the effect of stat. 55 Geo. 3, c. 192, 225, 345. *Vide* also and consider *post*.

respectively authorised and required: and in default of the appearance of such infants or femmes covert in their own persons, or by their guardians or attornies in that behalf, and of acceptance of such admittance as aforesaid, it shall and may be lawful to and for the lord or lords of every such manor and manors, or his and their steward and stewards of the courts thereof, after such three several courts have been duly holden for such manor or manors, and proclamations in such several courts been regularly made, to nominate and appoint at any subsequent court or courts to be holden for such manor or manors, any fit person to be guardian or attorney for every such infant or feme covert for that purpose only, and by such guardian or attorney to admit every such infant or feme covert to all and every the said messuages, lands, tenements, and hereditaments, according to such estates as such infants or femmes covert shall be legally entitled to therein; and upon every such admittance, to impose and set such fine and fines as might have been legally imposed and set, if such infant so admitted had been of full age, or if such feme covert had been sole and unmarried."

S. 2. "And be it further enacted by the authority aforesaid, that upon every such admittance or admittances of any infant or feme covert as aforesaid, the fine or fines imposed and set thereupon, shall and may be demanded by the bailiff or agent of the lord or lords of such manors, by a note in writing, signed by the lord of such manor, or by his steward, to be left with such infant or feme covert, or with the guardian of such infant, or husband of such feme covert, or with the tenant or occupier of the messuages, lands, or tenements, to which such infant or feme covert was admitted; and that if in such case the said fine or fines, so imposed and set, be not paid or tendered to such lord or lords, or to his or their steward or

stewards, within three months after such demand made, that then it shall and may be lawful, to and for the lord or lords of such manor or manors where such admittance or admittances are had, to enter into and upon all and every the copyhold messuages, lands, tenements, and hereditaments, to which any such infant or feme covert shall be so admitted; and to hold and enjoy the same; and to receive the rents, issues, and profits thereof, but without liberty to fell any timber standing thereon, for so long time only, and until by such rents, issues, and profits, such lord or lords shall be fully paid and satisfied such fine and fines, together with all reasonable and necessary costs and charges which such lord or lords shall have been put unto in levying and raising the same, and in obtaining the possession of such copyhold messuages, lands, tenements, and hereditaments, although such infant or feme covert shall happen to die before such fine and fines, and the costs and charges aforesaid, shall be raised and collected; of all which rents, issues, and profits so to be received by such lord or lords of such manor or manors, or his or their stewards, bailiffs, or servants; upon the occasion aforesaid, such lord or lords of such manor or manors, shall yearly and every year, upon demand to be made by such person or persons who shall be entitled to the surplus of the rents and profits, over and above what will pay and satisfy such fine and costs, and charges so received as aforesaid, or by such person or persons as shall be then entitled to such copyhold estate, give and render a just and true account, and shall pay the said surplus rents, issues, and profits, if any, to such person and persons as shall be respectively entitled to the same."

S. 3. " And it is hereby further enacted, by the authority aforesaid, that as soon as such fine or fines, and the costs,

charges, and expenses aforesaid, shall be fully paid and satisfied, or if after such seizure of and entry upon such copyhold lands, tenements, and hereditaments, for the purposes aforesaid, such fine or fines, and the costs and charges aforesaid, shall be lawfully tendered and offered to be paid and satisfied to the lord or lords of such manor or manors, that then in any of the said cases, it shall and may be lawful to and for such infant or feme covert, or other person entitled thereto, to enter upon, and take possession of, and hold the said copyhold premises, according to such estate or interest as he or she shall be lawfully entitled to therein; and the lord and lords of such manor or manors, shall, and is, and are hereby required, in any of the said cases, to deliver possession thereof accordingly; and if such lord or lords of such manor, after such fine or fines, and the costs and charges aforesaid, shall be fully paid and satisfied, or after the same shall have been tendered or offered to be paid as aforesaid, shall refuse to deliver the possession of the said copyhold premises as aforesaid, he or they shall be liable to, and shall make satisfaction to the person or persons so kept out of possession, for all the damages that he or she shall thereby sustain, and all the costs and charges that he or she shall be put unto for recovery thereof."

S. 4. "And be it further enacted, by the authority aforesaid, that where any infant or feme covert shall be admitted to any copyhold messuages, lands, tenements, or hereditaments, if the guardian of such infant, or husband of such feme covert, shall pay to the lord or lords of any manor or manors, the fine or fines legally imposed and set upon such admittance or admittances, and the costs and charges which such lord of such manors shall have been put unto as aforesaid, that then it shall and may be lawful, to and for every guardian of such infant, or hus-

band of such feme covert, their executors and administrators, to enter into, and to hold and enjoy, all and every the said copyhold messuages, lands, tenements, and hereditaments, to which such infant or feme covert shall be so admitted, and the rents, issues, and profits thereof, to receive and take to his and their own use, until thereby such guardian of such infant, or husband of such feme covert, their executors and administrators, shall be fully satisfied, and paid all and every such sum and sums of money as they shall respectively pay and disburse upon the account aforesaid, notwithstanding the death or deaths of such infants or femes covert shall happen before such sum or sums of money so expended, shall or may be so raised and reimbursed."

S. 5. "Provided always, and be it enacted by the authority aforesaid, that from and after the aforesaid 24th day of June, 1723, no infant or feme covert shall forfeit any copyhold messuages, lands, tenements, or hereditaments, within that part of Great Britain called England, and the dominion of Wales, for their neglect or refusal to come to any court or courts to be kept for any manor or manors, whereof such messuages, lands, tenements, or hereditaments are parcel, and to be admitted thereto, not for the omission, denial, or refusal of any such infant or feme covert to pay any fine or fines, imposed or set upon their or any of their admittances to any such copyhold messuages, lands, tenements, or hereditaments; any law, usage, or custom to the contrary thereof notwithstanding."

S. 6. "Provided nevertheless, That if the said fine or fines imposed in any of the cases before mentioned, shall not be warranted by the custom of the manor, or shall be unlawful, that then such infant or feme covert shall be at liberty to controvert the legality of such fine or fines, in such manner as he or she might have done, if

this act had never been made; any thing herein contained to the contrary notwithstanding."

9 GEO. II. c. 36. (148)

" An Act to restrain the disposition of lands, whereby the same become unalienable."

" Whereas gifts or alienations of lands, tenements, or hereditaments, in mortmain, are prohibited or restrained by *Magna Charta*, and divers other wholesome laws (149), as prejudicial to, and against the common utility; nevertheless this public mischief has of late greatly increased by many large and improvident alienations or dispositions made by languishing or dying persons, or by other persons, to uses called *charitable uses*, to take place after their deaths, to the disherison of their lawful heirs: For remedy whereof, be it enacted by, &c., that from and after the twenty-fourth day of June, which shall be in the year of our Lord one thousand seven hundred and thirty-six, no manors, lands, tenements, rents, advowsons, or other hereditaments, corporeal or incorporeal whatsoever, nor any sum or sums of money, goods, chattels, stocks in the public funds, securities for money, or any other personal estate whatsoever, to be laid out or disposed of in the purchase of any lands, tenements, or hereditaments, shall be given, granted, aliened, limited, released, transferred, assigned or appointed, or any ways conveyed or settled to or upon any person or persons, bodies politic or corporate, or otherwise, for any estate or interest whatsoever, or any ways charged or incumbered by any person or

(148) See this statute and the exposition thereof in Duke's Ch. Uses by Bridgman, pp. 197, 213, &c. And see *ante*, pt. 1. pa. 248.
(149) *Ante*, pt. 1. pa. 254.

persons whatsoever, in trust, or for the benefit of any charitable uses whatsoever; unless such gift, conveyance, appointment, or settlement of any such lands, tenements, or hereditaments, sum or sums of money, or personal estate (other than stocks in the public funds), be and be made by deed indented, sealed, and delivered in the presence of two or more credible witnesses, twelve calendar months at least before the death of such donor or grantor, (including the days of the execution and death), and be enrolled in his Majesty's High Court of Chancery, within six calendar months next after the execution thereof; and unless such stocks be transferred in the public books usually kept for the transfer of stocks, six calendar months at least before the death of such donor or grantor (including the days of the transfer and death), and unless the same be made to take effect in possession for the charitable use intended, immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, limitation, clause, or agreement whatsoever, for the benefit of the donor or grantor, or of any person or persons claiming under him."

[S. 2. Provides that the above restrictions shall not extend to any purchasers for valuable considerations.]

[S. 3. Enacts that gifts, &c. otherwise made, shall be absolutely null and void.]

[S. 4. Excepts out of the above provisions any dispositions to, or in trust for either of the two Universities in England, or any of the colleges, or houses of learning, within either of them, or to or in trust for the colleges of Eton, Winchester, or Westminster, for the better support of the scholars only on the foundations.]

52 GEO. III. c. 102.

"An Act for the registering and securing of charitable donations." (150.)

"Whereas charitable donations have been given for the benefit of the poor and other persons in England and Wales to a very considerable amount, and many of the aforesaid donations appear to have been lost, and others, from the neglect of payment and the inattention of those persons who ought to superintend them, are in danger of being lost, or rendered very difficult to be preserved: Be it therefore enacted by," &c. "That a memorial or statement of the real and personal estate, and of the gross annual income, investment, and the general and particular objects of all and every charity and charities, and charitable donations, for the benefit of any poor or other persons in any place in England and Wales, which shall have been founded, established, made, benefited, increased, or secured, together with the names of the respective founders of or benefactors thereto, where known, and also of the person or persons in whose custody, possession, or controul, the deeds, wills, and other instruments whereby such charities or charitable donations shall have been founded, established, made, benefited, increased, or secured, may be, and also of the names

(150.) Vide Stat. 43 Eliz. c. 4, of charitable uses, intituled, "An Act to redress the misemployment of lands, goods, and stocks of money heretofore given to certain charitable uses." Duke's Ch. Uses, by Bridgman, p. 1; and the Exposi-

tions of that Stat., by Sir F. Moore, *ib.* p. 122.

Vide also 52 Geo. 3. c. 101, "An Act to provide a summary remedy in cases of abuses of trusts created for charitable purposes."

of the then trustee or trustees, feoffee or feoffees, possessor or possessors of such real or personal estate, shall, from and after six calendar months after the passing of this act, be registered by such person or persons who shall then be the trustee or trustees, feoffee or feoffees, possessor or possessors thereof, or some or one of such persons, in manner and in the form contained in the schedule to this act annexed, in the office of the Clerk of the Peace of the county, or city, or town, being a county of itself, within which such poor or other persons shall be; and such memorial or statement shall be signed by such person or persons causing the same to be registered and left in the said office of such Clerk of the Peace, who shall forthwith transmit a duplicate or copy of the same unto the enrolment office of the High Court of Chancery."

S. 2. "And be it further enacted, that wherever any such charity or charitable donations shall be founded, established, made, or benefited, increased or secured by any deed, will, or other instrument hereafter to be made or executed by any person or persons, that then a like memorial or statement, according to the directions hereinbefore contained, shall be registered, and left and transmitted as aforesaid, by such person or persons as are hereinbefore mentioned, within twelve months after the decease of such person or persons by whom any such will, deed, or deeds, or other instrument shall have been made or executed."

[S. 5. Provides that if any charitable donation shall not be duly registered under that Act, any two or more persons interested in the donation may complain thereof, by petition to the Courts of Chancery or Exchequer, who shall hear and determine the same; and the order therein to be conclusive.]

[S. 9. Gives the Court of Quarter Sessions power to

extend the period for registering charitable donations, not exceeding six calendar months.]

[S. 10. Provides that the act shall not extend to charitable donations not issuing out of or secured upon lands, tenements, or hereditaments, or directed to be secured thereon, or to be permanently invested in government or any public stocks or funds, nor to donations which may be wholly or in part expended in the charitable purposes designed, at the discretion of the trustees, &c.]

[S. 11, 12, and 13. Provide that the act shall not extend to any hospital, school, or other charitable institution, founded, improved, or regulated by or under the authority of the King, or any of his predecessors, or of any special act of Parliament thereunto particularly relating; nor to any charitable donation under the superintendence of any such hospital, school, or institution; nor to the governors of the corporation of the charity for the relief of poor widows and children of clergymen; nor to any friendly society, the rules whereof shall have been confirmed according to the provisions of the act or acts for the encouragement and relief of friendly societies; nor to either of the Universities of Oxford or Cambridge, nor to any college or hall thereto belonging, nor to any charitable bequest, devise, gift or foundation belonging thereto, or under the controul, direction, superintendence or management of the said universities, or either of them, or any college or hall therein respectively; nor to the Radcliffe Infirmary within the University of Oxford; nor to the colleges of Westminster, Eton or Winchester; nor to any cathedral or collegiate church, within England and Wales; nor to the Charter-house; nor to the corporation of the Trinity-house of Deptford Stroud; nor to any funds applicable to charitable purposes for the benefit of any persons of the Jewish nation: nor to any

charitable foundation or donation given to and for the benefit of any person or persons of the society or people called Quakers, and which shall be under the superintendence and controul of persons of that persuasion; nor to any charity or charitable donation or foundation, the accounts of the income and expenditure whereof shall have been directed to be annually passed in the High Court of Chancery, nor to any charity or charitable donation or foundation, the annual gross income whereof did not exceed forty shillings, and of which the trustee or trustees, feoffee or feoffees, possessor or possessors, some or one of them, might within six months after the passing of the act, deposit in the hands of the minister of the parish wherein any of the objects of such charity, charitable donation or foundation should be, a written memorial or statement in like form as in the schedule thereunto annexed is contained, and which by such minister should be forthwith deposited in the parish chest.]

S. 14. "And be it further enacted, That where any body corporate, guild, or fraternity, shall be entrusted with the possession or distribution of divers charities or charitable donations or foundations, or of the rents and profits thereof, that in such cases all such charities, charitable donations and foundations, may be registered and stated in one and the same memorial."

[Schedule to which the above act refers:]

"A memorial or statement in pursuance of an Act for the registering and securing of charitable donations, whereby it is declared by the undersigned [*state the name or names of the persons who sign the memorial or statement*] that the real or personal estate [*state this as the case may be*] of the [*state the title or appellation of*

the charity or charitable donation,] consists of [state this as the case may be ; and if real estate, whether it be in lands, tenements or hereditaments, and of what tenure, and where the same are situate, or whether of any charge or incumbrance on any lands, tenements or hereditaments, and where situate : and if personal estate, describe the nature of it, and how secured,] and the gross annual income arising therefrom amounts to [state the sum], and the objects of which charity or charitable foundation are [state the general or particular objects of the charity], and which charity or charitable foundation was, according to the best of my [or, our, as the case may be] knowledge and belief, founded by [state by whom ; and if benefited, increased or secured by any other person, state the same and by whom], and the deeds, wills, and other instruments [state this as the case may be ; and if no deeds, wills, or other instruments exist, state the same] are, to the best of my [or, our, as the case may be] knowledge and belief, in the custody, possession or controul [state this as the case may be] of [state the name of the body corporate or natural person] and the trustees, feoffees or possessors [state this as the case may be] of the said real and personal estate [state this as the case may be] are, to the best of my [or, our, as the case may be] knowledge and belief [state the name of the body corporate or natural person, as the case may be.]

(Signed)

A. B.

C. D.

E. F.

Trustee or trustees, feoffees, possessor or possessors, of the real or personal estate [as the case may be] of the charity or charitable donation hereby memorialized and registered."

31 GEO. II. c. 14.

" An Act for further explaining the laws touching the electors of knights of the shire to serve in Parliament for that part of Great Britain called England."

" Whereas by an act made in the 18th year of the reign of his present Majesty, intituled, *An act to explain and amend the laws touching the election of knights of the shire to serve in parliament for that part of Great Britain and Ireland called England*; it is enacted, that no person shall vote at the election of any knight or knights of a shire within that part of *Great Britain called England*, or principality of *Wales*, without having a freehold estate in the county for which he votes, of the clear yearly value of forty shillings, over and above all rents and charges payable out of or in respect of the same: And whereas, notwithstanding the said act, certain persons who hold their estates by copy or [of] court roll, pretend to have a right to vote, and have at certain times, taken upon them to vote at such elections; Be it therefore enacted, by the King's most excellent Majesty, by and with the advice," &c. " that from and after the 24th day of June, 1758, no person, who holds his estate by copy of court roll, (151) shall be intituled thereby to vote at the election of any knight or knights of a shire within that part of Great Britain called England or principality of Wales: And if any person shall vote in any such election, contrary to the true intent and meaning hereof, every such vote shall be void to all intents and

(151) A copyholder has been allotted of common. *Ante* pt. allowed to vote in respect of an 1. pa. 623, (n. 41).

purposes whatsoever; and every person so voting shall forfeit to any candidate for whom such vote shall not have been given, and who shall first sue for the same, the sum of fifty pounds, to be recovered by him or them, his, her, or their executors, and administrators, together with full costs of suit, by action of debt in any of his Majesty's courts of record at Westminster, wherein no essoign, protection, wager of law, privilege or imparlance shall be admitted or allowed; and in every such action the proof shall lie on the person against whom such action shall be brought."

[The act contains other clauses regulating the mode of bringing the action, and limiting it to nine calendar months after the fact is committed.]

39 & 40 GEO. III. c. 56.

"An Act for relief of persons entitled to entailed estates to be purchased with trust monies." (152).

S. 1. "Whereas by the practice of courts of equity in cases in which money under the control of such courts is subject to be laid out in the purchase of lands, to be limited to uses capable of being barred by fine, the said courts direct such money to be paid to the party or parties who could by fine bar the uses to which such lands, in case the same had been purchased, would have been limited, and do not require or compel the actual investment of such monies in the purchase of lands,

(152) The jurisdiction of equity under this act is discretionary, therefore the court will not order the money to be paid, upon an ex

parte petition, when a doubtful question is involved. *Ex parte Sterne*, 6 Ves. 156. 3 Ves. & Beam, 11.

notwithstanding other persons might take estates or interests therein, if the same were purchased, and be intitled to hold such estates or interests until such fine was actually levied: And whereas nevertheless, where money under the control of the said courts is subject to be invested in the purchase of lands, to be limited to uses not capable of being barred by fine, but capable of being barred by recovery, the said courts, according to the practice thereof, refuse to direct the same to be paid to the party or parties, who, in case such lands had been purchased, could by recovery have barred all the uses to which the same would have been limited, and require and compel the actual investment of such monies in a purchase or purchases of some lands; and such last-mentioned practice is attended with great inconvenience and expense to the party or parties who by a recovery could bar the uses to which such lands are to be limited when purchased, and the interest and benefit of others who might take estates barable by such recovery when suffered, is not according to such last-mentioned practice materially promoted or secured, and it may therefore be expedient to alter such practice: And whereas it may also be expedient to provide some satisfactory and summary proceeding, whereby trustees possessed of money subject to be laid out in lands may be required in proper cases to pay such monies to the parties intitled, and under this act to become entitled to receive the same, be it therefore enacted, by," &c. "that from and after the passing of this act, in all cases where money, under the control of any court of equity, or of or to which any individuals as trustees are possessed or intitled, shall be subject to be invested, in the purchase of freehold or *copyhold* hereditaments, or both, to be settled upon any person or persons, in such manner

that it would be competent in case such money had been invested in the purchase of real estates for the person or persons who would be the tenant or tenants of the first estate, or estates tail therein, either alone or together with the person or persons who would be the owner or owners of the particular preceding estate or estates therein, if any, by deed, fine, or common recovery, or any of them, on other lawful act, in the case of freehold hereditaments, or by *surrender and recouery, or either of them, or other lawful act, in the case of copyhold hereditaments*, to bar the first estate or estates tail, and the rights and interests of all persons in remainder, it shall not be necessary to have such money actually invested in lands or hereditaments, in order that such estates tail and remainders over may be so barred; but that it shall and may be lawful to and for the high court of chancery, or such court of equity, under the controul of which such money shall be, and in the case of trustees to and for the said high court, of chancery, in a summary way, upon petition of the person or persons who would be tenant or tenants of the first estate or first estates tail, and of the person or persons who would be the owner or owners of the antecedent particular estate or estates, if any, in the lands and hereditaments in case the same were purchased, such petitioners being adults, and in case where any of the parties are or is femes covert or a feme covert, they or she being first separately examined in court, or upon a commission and consenting to order the monies subjected to such trusts to be paid to the petitioners or any of them, or to be paid and applied in such manner and for such purposes as the petitioners shall appoint and the court shall approve of."

S. 2. "And be it further enacted, that in all cases where monies subjected to be laid out in the purchase of here-

ditments to be settled as aforesaid, shall happen to be invested in government or real or other securities, all such securities shall, for the purposes of this act, be considered as money, and shall and may accordingly be transferred, assigned, and disposed of, under an order of the respective courts aforesaid, made in a summary way upon the petition of such persons, and with such examination and consent, where necessary, as aforesaid, in such and the same manner as monies subjected to be laid out in the purchase of hereditaments, to be settled as aforesaid are hereinbefore authorised to be paid, applied, and disposed of."

39 & 40 GEO. III. c. 98.

" An Act to restrain all trusts and directions in deeds or wills whereby the profits or produce of real or personal estate shall be accumulated, and the beneficial enjoyment thereof postponed beyond the time therein limited." (153).

S. 1. " Whereas it is expedient that all dispositions of real or personal estates whereby the profits and produce thereof are directed to be accumulated, and the beneficial enjoyment thereof is postponed, should be made subject to the restrictions hereinafter contained: May it therefore please," &c. "and be it enacted, by," &c. " that no person or persons shall, after the passing of this act, by any deed or deeds, *surrender or surrenders*, will, codicil, or otherwise howsoever, settle or dispose of any

real or personal property, so and in such manner that the rents, issues, profits, or produce thereof, shall be wholly, or partially accumulated, for any longer term than the life or lives of any such grantor or grantors, settler or settlers, or the term of 21 years from the death of any such grantor, settler, devisor, or testator (154); or during the minority or respective minorities of any person or persons who shall be living or in *ventre sa mère*, at the time of the death of such grantor, devisor, or testator; or during the minority or respective minorities only of any person or persons, who under the uses or trusts of the deed, surrender, will, or other assurances directing such accumulations, would for the time being, if of full age, be intitled unto the rents, issues, and profits, or the interest, dividends, or annual produce so directed to be accumulated: And in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits, and produce of such property so directed to be accumulated, shall, so long as the same shall be directed to be accumulated contrary to the provisions of this act, go to and be received by such person or persons as would have been intitled thereto if such accumulation had not been directed.

S. 2. "Provided always, and be it enacted, that nothing in this act contained shall extend to any provision for payment of debts of any grantor, settler, or devisor, or other person or persons, or to any provision for raising portions for any child or children of any grantor, settler,

(154) It has been decided that a trust by will for the accumulation of dividends during the life

of A., contrary to the statute, is good for 21 years. *Griffiths v. Vere*, 9 Ves. 127.

or devisor, or any child or children of any person taking any interest under any such conveyance, settlement, or devise, or to any direction touching the produce of timber or wood upon any lands or tenements; but that all such provisions and directions shall and may be made and given as if this act had not passed."

S. 3. [Act not to extend to any disposition of heritable property in Scotland.]

S. 4. [The restrictions to take effect as to wills made before the act, only where the testator shall be living and of sound mind after the expiration of 12 calendar months from the passing of the act.]

42 GEO. III. c. 116.

"An Act for consolidating the provisions of the several Acts passed for the redemption and sale of the land-tax, into one act, and for making further provision for the redemption and sale thereof; and for removing doubts respecting the right of persons claiming to vote at elections for knights of the shire, and other members to serve in parliament, in respect of messuages, lands, or tenements, the land tax upon which shall have been redeemed or purchased."

S. 51. "And be it further enacted, that for the purpose of redeeming any land-tax charged on any manors, messuages, lands, tenements, or hereditaments, belonging to any person or persons (not being respectively bodies politic or corporate, or companies, or feoffees, or trustees for charitable or other public purposes) whether such manors, messuages, lands, tenements, or hereditaments shall be respectively situate in the same, or in any other division or place in the same county, riding, shire, or

stewartry, or in any other county, riding, shire, or stewartry, and whether such land-tax shall have been or shall be contracted for, either before or on the said twenty-fourth day of June, one thousand eight hundred and two, by virtue of the said recited acts, or any of them, or at any time thereafter, by virtue of this act, it shall be lawful for all and every such person and persons who are, is, or shall for the time being be seized or possessed, or intitled beneficially in possession to the rents and profits of, but who shall not have the absolute estate or interest in, any manors, messuages, lands, tenements, or hereditaments, or any *heriots, services*, emoluments, or advantages, issuing or payable from or in respect of any freehold, or *copyhold, or customary* messuages, lands, tenements, or hereditaments, or incident thereto, or accruing therefrom (other than and except tenants at rack rent for any terms of years, or from year to year, or at will, and tenants holding under the crown any lands or tenements within the survey and receipt of the exchequer, or the Duchy of Lancaster, or under the Duke of Cornwall, any lands or tenements belonging to, and parcel of, the Duchy of Cornwall,) but nevertheless under the restrictions and regulations hereinafter mentioned, absolutely to sell, and dispose of, by public sale or private contract, and by *deed indented and inrolled, or registered in the manner prescribed by this Act*, to convey (either at one time for the purpose of making good the whole of the consideration for the redemption of any such land-tax, or at various times for the purpose of making good the respective instalments thereof, as the same shall respectively become due, or any number of instalments at once, as shall be most expedient), any such manors, messuages, lands, tenements, or hereditaments, or any such *heriots, services*, emoluments, or advantages, whereof such per-

son or persons shall be in the actual possession, or intitled beneficially to the rents and profits, as shall be eligible and necessary, whether of freehold, or of *copyhold*, or *customary tenure*, or holden for any term or terms of years (other than for any term or terms of years at a rack rent,) and whether the manors, messuages, lands, tenements, or hereditaments, *heriots*, *services*, emoluments, or advantages so sold shall be charged or not charged with, or shall be exempt from the payment of land-tax, and if the same shall be charged with any land-tax, then freed and discharged from such land-tax; and it shall also be lawful for all and every such persons and person who are or is, or shall for the time being be in the actual receipt or perception of, and beneficially intitled to the rents and services reserved, or due and payable in respect and out of any manors, messuages, lands, tenements, or hereditaments which shall have been or shall be granted by him, her, or them, or any former owner or owners thereof, for any beneficial lease or leases, or by any copy or copies of the court roll, or demised according to the custom of any manor for life or lives, or years absolute, or years determinable on any life or lives, absolutely to sell and dispose of, by public sale or private contract, and, in like manner, to convey (either at one time or various times as aforesaid) the fee simple and inheritance of any such manors, messuages, lands, tenements, or hereditaments which shall have been or shall be so granted or demised for any beneficial lease or leases, or by any copy or copies of court roll, or by any other grant, according to the custom of any manor, for life or lives, or years absolute, or years determinable upon any life or lives, and also the rents and services, and other profits reserved or payable upon or in respect of such leasehold or *copyhold* tenements or

hereditaments, subject to the subsisting interests of the respective lessees, *copyholders* or other customary tenants, whether such last mentioned manors, messuages, lands, tenements, or hereditaments, shall be charged or not charged with, or shall be exempt from the payment of land-tax, or whether the land-tax charged thereon shall have been redeemed by the respective lessees or *copyholders*, or customary tenants thereof, or not, and if the same shall be charged with any tax, then freed and discharged from such land-tax; and it shall be lawful for all and every such persons and person by deed indented, and also enrolled or registered as herein is directed, and under the restrictions and regulations herein-after mentioned, to convey or demise any of such freehold, *copyhold*, or leasehold manors, messuages, lands, tenements, or hereditaments whereof they shall be in the actual possession, or beneficially intitled to the rents and profits as aforesaid, freed and discharged from land-tax, in case any land-tax shall be charged thereon, to any person or persons by way of mortgage, either in fee-simple or for any term or terms of years (*where the same shall not be of copyhold or customary tenure*) for securing such sum or sums of money as shall be sufficient to redeem the land-tax which hath been or shall be so contracted for, by such person or persons as aforesaid, or to grant any rent charge to be issuing out of and chargeable upon any such manors, messuages, lands, tenements, or hereditaments as aforesaid, not exceeding the amount of the land-tax so contracted for as aforesaid: Provided always that no sale, mortgage or grant of or out of any manors, messuages, lands, tenements, or hereditaments, shall be made by any such person or persons by virtue of this act, other than for the purpose of redeeming land-tax charged thereon. (in cases where the

son or persons shall be in the actual possession, or intitled beneficially to the rents and profits, as shall be eligible and necessary, whether of freehold, or of *copyhold*, or *customary tenure*, or holden for any term or terms of years (other than for any term or terms of years at a rack rent,) and whether the manors, messuages, lands, tenements, or hereditaments, *heriots*, *services*, emoluments, or advantages so sold shall be charged or not charged with, or shall be exempt from the payment of land-tax, and if the same shall be charged with any land-tax, then freed and discharged from such land-tax; and it shall also be lawful for all and every such persons and person who are or is, or shall for the time being be in the actual receipt or perception of, and beneficially intitled to the rents and services reserved, or due and payable in respect and out of any manors, messuages, lands, tenements, or hereditaments which shall have been or shall be granted by him, her, or them, or any former owner or owners thereof, for any beneficial lease or leases, or by any *copy* or *copies of the court roll*, or demised according to the custom of any manor for life or lives, or years absolute, or years determinable on any life or lives, absolutely to sell and dispose of, by public sale or private contract, and, in like manner, to convey (either at one time or various times as aforesaid) the fee simple and inheritance of any such manors, messuages, lands, tenements, or hereditaments which shall have been or shall be so granted or demised for any beneficial lease or leases, or by any *copy* or *copies of court roll*, or by any other grant, according to the custom of any manor, for life or lives, or years absolute, or years determinable upon any life or lives, and also the rents and services, and other profits reserved or payable upon or in respect of such leasehold or *copyhold* tenements or

hereditaments, subject to the subsisting interests of the respective lessees, *copyholders* or other *customary tenants*, whether such last mentioned manors, messuages, lands, tenements, or hereditaments, shall be charged or not charged with, or shall be exempt from the payment of land-tax, or whether the land-tax charged thereon shall have been redeemed by the respective lessees or *copyholders*, or *customary tenants* thereof, or not, and if the same shall be charged with any tax, then freed and discharged from such land-tax; and it shall be lawful for all and every such persons and person by deed indented, and also enrolled or registered as herein is directed, and under the restrictions and regulations hereinafter mentioned, to convey or demise any of such freehold, *copyhold*, or leasehold manors, messuages, lands, tenements, or hereditaments whereof they shall be in the actual possession, or beneficially intitled to the rents and profits as aforesaid, freed and discharged from land-tax, in case any land-tax shall be charged thereon, to any person or persons by way of mortgage, either in fee-simple or for any term or terms of years (*where the same shall not be of copyhold or customary tenure*) for securing such sum or sums of money as shall be sufficient to redeem the land-tax which hath been or shall be so contracted for, by such person or persons as aforesaid, or to grant any rent charge to be issuing out of and chargeable upon any such manors, messuages, lands, tenements, or hereditaments as aforesaid, not exceeding the amount of the land-tax so contracted for as aforesaid: Provided always that no sale, mortgage or grant of or out of any manors, messuages, lands, tenements, or hereditaments, shall be made by any such person or persons by virtue of this act, other than for the purpose of redeeming land-tax charged thereon (in cases where the

saine shall be charged with any land-tax), and also on other manors, messuages, lands, tenements, or hereditaments, which stand limited or settled, and subject to or for the same uses, trusts, intents, or purposes, or in the same order or course of limitation as the manors, messuages, lands, tenements or hereditaments which shall be so sold, mortgaged, or charged as aforesaid, save and except as to such variations as may necessarily be occasioned by the difference in the nature of the tenure of freehold and *copyhold* estates."

[S. 52. Authorises tenants in tail of any manors or hereditaments in England, to convey such part thereof, as shall be deemed eligible and necessary to be sold, for the purpose of redeeming the land-tax charged on such manors and hereditaments, by deed indented and inrolled or registered in the manner prescribed by that act; and provides that such deed shall as effectually bar all estates tail and other estates in remainder, &c., as if such tenant in tail had levied a fine, or suffered a common recovery.]

S. 53. " Provided always and be it further enacted; that for the purposes aforesaid, it shall be lawful for all committees and curators of lunatics or idiots, and guardians or tutors of infants, and all executors and administrators, curators or trustees whatsoever, seised or possessed of any manors, messuages, lands, tenements or hereditaments in trust, and having authority to act for infants, minors, issue unborn, femmes covert, or other persons incapable by law or deed to act for themselves, on the behalf of such incapacitated persons respectively, and under the restrictions and regulations herein contained, to sell or mortgage, and convey or grant any rent charge out of any manors, messuages, lands, tenements, or hereditaments, belonging to, or limited or settled to

the use, or for the benefit of any such lunatics or idiots, infants or minors, issue unborn, femmes covert, or other incapacitated persons, which such lunatics or idiots, infants or minors, issue unborn (if *in esse*), femmes covert, or other incapacitated persons, could or might have sold, mortgaged, or charged with any rent charge for the purpose of redeeming any land-tax in respect of their estate or interest therein, either by virtue of this act or otherwise, if they respectively had not been under any such incapacity as aforesaid, and in the same manner in all respects as they respectively could or might have sold, or mortgaged, and conveyed or charged the same."

S. 54. "And be it further enacted, that all sales, mortgages, or grants in relation to estates in England, which shall be made by virtue of this act by any person or persons (other than bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, and other than such person or persons holding under any grant from the crown, or any act of Parliament, as hereinafter mentioned) shall be made under the authority, and with the consent and approbation of the commissioners for the time being, acting in the execution of this act, by virtue of his Majesty's warrant under the royal sign manual, for the county, riding, or place, in which the manors, messuages, lands, tenements, or hereditaments, which shall be so sold, mortgaged, or charged, shall be situate; and no such sale, mortgage, or grant shall be valid or effectual, unless two at least of such commissioners shall certify their consent thereto, and approbation thereof, by signing and sealing the deed of sale, mortgage, or grant, as parties thereto."

[S. 55. Provides that no manors, &c. in England, shall be so sold, mortgaged, &c., without one calendar month's

previous notice in writing being given to the said commissioners, by the person or persons desirous of making such sale, &c., nor unless such person or persons shall previously to such sale, &c. produce to the said commissioners a schedule in writing, declaring the quantity or duration of his, her, or their estate or interest in the manors, &c., whereon the land-tax proposed to be redeemed shall be charged, and (if the same shall not be an estate of inheritance,) then the name or names of the bodies politic, &c. or other person or persons next intitled to any beneficial interest in such manors, &c. and of the person or persons having any mortgage, charge, lien, or incumbrance thereon, and the amount thereof, and (if more than one) the priorities of the respective incumbrances.]

S. 57. "Provided also and be it further enacted, that nothing herein contained shall be construed to extend to enable any tenant for lives, or for years determinable on lives, or for years absolute, though not at rack-rent, to sell any part of the tenement demised, in case of a demise, for which any fine or premium was paid, without the consent of the bodies politic or corporate, or companies, or other person or persons entitled to the immediate estate in reversion upon such demise."

[S. 59. "Provides that when any such sale as aforesaid shall be by public auction, the commissioners shall cause ten days' previous notice, at the least, of such intended sale, to be published in some newspaper usually circulated in the county, riding, stewartry, or place wherein such manors, &c. shall be situate; and that when any such sale shall be by private contract, such commissioners shall not certify their consent thereto, without having an estimate in writing, verified upon oath or solemn affirmation (which any one of them may ad-

minister) of the value of such part of the estate as shall be proposed to be sold, nor without being satisfied that the sale thereof will not materially injure the residue of the estate, and that the part proposed to be sold is proper under all circumstances for the purposes of the act.]

S. 60. "And be it further enacted, that it shall be lawful for any person or persons (not being respectively bodies politic or corporate, or companies, or justices or trustees for charitable or other public purposes, and not holding under any grant from the crown, or any act of Parliament as hereinafter is mentioned,) who are or shall be seized of, or beneficially intitled to, any manors in England, of which any *copyhold or customary estates* shall be holden, with the approbation of the Court of Chancery, to be signified by order upon a petition to be preferred in a summary way, to enfranchise any such *copyhold or customary estates*."

[S. 68. Enacts that where the monies to be paid as the consideration for any sale, mortgage, or grant to be made by any person or persons (other than bodies politic or corporate, or companies, or justices or trustees for charitable or other public purposes) shall not exceed the sum of one thousand pounds, the deed of sale, mortgage, or grant, or the enrolment thereof, and in cases of *copyhold or customary estates*, the deeds of sale, or of grant, or the admittance to such *copyhold or customary estates*, or any copy of the entry upon the court rolls of such deed of sale, or grant or admittance, shall not be liable to any stamp duty whatever; and that every deed of sale, or mortgage, and every surrender, grant, and admittance of or to any messuages, &c. sold by virtue of the therein recited acts for a consideration not exceeding one thousand pounds, and all copies of the entry upon

the court rolls of any such surrenders, grants, or admissions, should be valid, although no stamp duty should have been paid for the same.]

[S. 69. Authorises all bodies politic or corporate, and companies, and feoffees or trustees for charitable or other public purposes, (notwithstanding any restraint by any private statute, bye-law, &c.) but under the restrictions and regulations thereafter mentioned for the purpose of redeeming any land-tax charged on any manors, &c. belonging to such bodies politic &c. to sell by public sale or private contract, and by deed indented, and inrolled or registered in the manner required by the act, to convey any manors, &c. whereof they may be in the actual possession or intitled beneficially, whether of freehold, or *copyhold*, or *customary* tenure, or holden for a term or terms of years otherwise than at rack rent, and whether charged with or exempt from land-tax, and if so charged, then freed from such land-tax; and in like manner to convey the fee-simple and inheritance of any manors, &c. which shall have been granted and demised by them for any beneficial lease or leases, or *by copy or copies of court-roll*, or *by any other grant according to the custom of any manor*, for life or lives, or years absolute, or years determinable upon any life or lives, and also the rents and services, and other profits reserved or payable upon or in respect of such leasehold or copyhold tenements, or hereditaments (subject to the subsisting interests of the respective lessees, copyholders or customary tenants,) and whether charged or exempt from land-tax, and although the land-tax should have been redeemed by such lessees, &c. and if so charged, then discharged from such land-tax; and by the like deed to convey or demise any parts of such freehold, copyhold or customary, or leasehold manors, &c. to any

person or persons by way of mortgage, either in fee, or for a term or terms of years (where the same should not be of copyhold or customary tenure,) for securing such sum of money as should be sufficient to redeem the land-tax to be contracted for; or to grant any rent charge out of such manors, &c. not exceeding the land-tax contracted for: But no such sale, &c. to be made other than for the purpose of redeeming the land-tax charged on such manors, &c. (when charged with any land-tax) and on other manors limited to the same uses, &c. except as to such variations as may necessarily be occasioned by the difference in the tenure of freehold and copyhold estates.]

S. 70. " And be it further enacted, that for the purpose of redeeming any such land-tax as aforesaid, it shall be lawful for all such bodies politic and corporate, and companies, and feoffees or trustees for charitable or other public purposes, by deed indented, and inrolled or registered as aforesaid, to enfranchise any messuages, lands, tenements, or hereditaments, *which are or shall be holden by copy of court roll or other customary tenure*, of any manor belonging to any such bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, whether such manor be subject to any lease or not; and also to sell and dispose of any heriots or fee-farm rents, chief rents, or quit rents, or other emoluments or advantages issuing or payable from or in respect of any freehold or copyhold or customary manors, messuages, lands, tenements, or hereditaments, or incident thereto and accruing therefrom."

S. 71. " And be it further enacted, that where any person or persons, holding under any grant from the crown, or under any act of Parliament, any manors, mes-

the court rolls of any such surrenders, grants, or admissions, should be valid, although no stamp duty should have been paid for the same.]

[§. 69. Authorises all bodies politic or corporate, and companies, and feoffees or trustees for charitable or other public purposes, (notwithstanding any restraint by any private statute, bye-law, &c.) but under the restrictions and regulations thereafter mentioned for the purpose of redeeming any land-tax charged on any manors, &c. belonging to such bodies politic &c. to sell by public sale or private contract, and by deed indented, and enrolled or registered in the manner required by the act, to convey any manors, &c. whereof they may be in the actual possession or intitled beneficially, whether of freehold, or *copyhold*, or *customary* tenure, or holden for a term or terms of years otherwise than at rack rent, and whether charged with or exempt from land-tax, and if so charged, then freed from such land-tax; and in like manner to convey the fee-simple and inheritance of any manors, &c. which shall have been granted and demised by them for any beneficial lease or leases, or by copy or copies of court-roll, or by any other grant according to the custom of any manor, for life or lives, or years absolute, or years determinable upon any life or lives, and also the rents and services, and other profits reserved or payable upon or in respect of such leasehold or copyhold tenements, or hereditaments (subject to the subsisting interests of the respective lessees, copyholders or customary tenants,) and whether charged or exempt from land-tax, and although the land-tax should have been redeemed by such lessees, &c. and if so charged, then discharged from such land-tax; and by the like deed to convey or demise any parts of such freehold, copyhold or customary, or leasehold manors, &c. to any

person or persons by way of mortgage, either in fee, or for a term or terms of years (where the same should not be of copyhold or customary tenure,) for securing such sum of money as should be sufficient to redeem the land-tax to be contracted for; or to grant any rent charge out of such manors, &c. not exceeding the land-tax contracted for: But no such sale, &c. to be made other than for the purpose of redeeming the land-tax charged on such manors, &c. (when charged with any land-tax) and on other manors limited to the same uses, &c. except as to such variations as may necessarily be occasioned by the difference in the tenure of freehold and copyhold estates.]

S. 70. " And be it further enacted, that for the purpose of redeeming any such land-tax as aforesaid, it shall be lawful for all such bodies politic and corporate, and companies, and feoffees or trustees for charitable or other public purposes, by deed indented, and inrolled or registered as aforesaid, to enfranchise any messuages, lands, tenements, or hereditaments, *which are or shall be holden by copy of court roll or other customary tenure*, of any manor belonging to any such bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, whether such manor be subject to any lease or not; and also to sell and dispose of any heriots or fee-farm rents, chief rents, or quit rents, or other emoluments or advantages issuing or payable from or in respect of any freehold or copyhold or customary manors, messuages, lands, tenements, or hereditaments, or incident thereto and accruing therefrom."

S. 71. " And be it further enacted, that where any person or persons, holding under any grant from the crown, or under any act of Parliament, any manors, mes-

messuages, lands, tenements, or hereditaments, wherein his Majesty, his heirs or successors, hath or shall have any estate, right, or interest, in remainder, reversion, or expectancy, (other than persons holding under the crown any manors, messuages, lands, tenements, or hereditaments, within the survey and receipt of the Exchequer, or the Duchy of Lancaster, or holding under the Duke of Cornwall, any manors, messuages, lands, tenements, or hereditaments belonging to and parcel of the Duchy of Cornwall, by virtue of any demise or grant by copy or court roll or otherwise, for life or lives, or for years determinable on any life or lives, or for any term of years absolute, or from year to year, or during pleasure,) have contracted or shall hereafter contract for the redemption of the land-tax charged on any of such manors, messuages, lands, tenements, or hereditaments, it shall be lawful for such person or persons (being in the actual possession or intitled beneficially to the rents and profits of such manors, messuages, lands, tenements, or hereditaments,) for the purpose of raising money to complete the redemption of the land-tax so contracted for, (but nevertheless under the restrictions and regulations hereinafter mentioned,) to sell and dispose of by public sale or private contract, and by deed indented, and inrolled or registered as herein is prescribed, to convey either at one time or at various times, as hereinbefore is mentioned, any of such manors, messuages, lands, tenements, or hereditaments, whether the same shall be charged or not charged with land-tax, and if charged with any land-tax, then freed and discharged from such land-tax; and it shall also be lawful for such person or persons, for such purpose, and under such restrictions and regulations as aforesaid, to enfranchise any messuages, lands, tenements, or hereditaments, which are or shall be holden by copy

of court roll or other customary tenure, of any such manors so holden by such person or persons as aforesaid, and also to sell and dispose of any heriots, fee-farm rents, chief rents, or quit rents, or other emoluments or advantages issuing or payable from or in respect of any manors, lands, tenements, or hereditaments, or incident thereto, or arising therefrom, any thing herein contained to the contrary thereof notwithstanding: Provided always that the manors, messuages, lands, tenements, or hereditaments of which the land-tax shall be so redeemed, shall stand and be limited to and for the same uses, trusts, intents, and purposes, as the manors, messuages, lands, tenements, or hereditaments, heriots, rents, emoluments, or advantages which shall be sold, or the manors, of which any such copyhold or customary estates shall be enfranchised, stood and were limited at the time of each sale or enfranchisement."

S. 76. " And be it further enacted, that every sale, enfranchisement, mortgage, or grant of any rent charge which shall be made of or out of any manors, messuages, lands, tenements, or hereditaments, by virtue of this act, by any bodies politic or corporate, or companies, or any feoffees or trustees for charitable or other public purposes, or by any such person or persons holding under any grant from the crown, or under any act of Parliament as aforesaid, shall be so made by, with, and under the consent, sanction, controul, direction, and authority of the said last mentioned commissioners (155) and no fur-

(155.) N. B. Special commissioners to be appointed by his Majesty for regulating and approving sales, contracts, &c. by bodies politic or corporate and companies, and feoffees or trustees for chari-

table and other public purposes, and sales, &c. of manors wherein the crown has any interest in remainder, &c. And see 54 Geo. 3. c. 173. s. 1 & 2. 57. Geo. 3. c. 100. s. 22.

ther or other consent, authority, approbation, or confirmation whatever shall be required to enable any such sales, enfranchisements, mortgages, or grants as aforesaid: Provided always, that no such sale, mortgage, enfranchisement, or grant, shall be valid and effectual unless two at least of the said commissioners shall certify their consent thereto and approbation thereof, by signing and sealing the deed of sale, enfranchisement, mortgage, or grant, as parties thereto."

[S. 81. Exempts from stamp duty all deeds or instruments whereby any sale, enfranchisement, mortgage, or grant should be made under the authority of the last-mentioned commissioners.]

S. 89. "And be it further enacted, that where any land-tax chargeable on any manors, messuages, lands, tenements, or hereditaments, *which are or shall be holden by copy of court roll or other customary tenure*, of any manor or manors belonging to any body politic or corporate, or company, or any feoffees or trustees for charitable or other public purposes as aforesaid, by virtue of any lease or leases, shall have been or shall be redeemed by any such body politic or corporate, or company, or feoffees or trustees for charitable or other public purposes, under the powers contained in any of the said recited acts or this act, the amount of the land-tax so redeemed or purchased, shall be considered as rent reserved to such body politic or corporate, or company, or such feoffees or trustees for charitable or other public purposes as aforesaid, out of such copyhold or customary manors, messuages, lands, tenements, or hereditaments, and be payable on the same days as such land-tax was payable before the redemption thereof; and the same powers shall be had, used, and enjoyed for the recovery thereof, as for the recovery of rent in arrear."

S. 88: " And be it further enacted, that where the fee-simple and inheritance of any manors, messuages, lands, tenements, or hereditaments, holden under any beneficial lease or leases, or by copy of court roll, as hereinbefore is mentioned, shall be proposed to be sold by virtue of this act, two calendar months' notice of such intended sale shall be given by the body politic or corporate, or company, or other person or persons proposing to sell the same, to the person or persons, for the time being, beneficially interested therein, under the subsisting lease or leases, or copy or copies of court roll thereof, or to him, her, or their committee or committees in cases of lunacy, or guardian or guardians in cases of infancy, or in any other cases of incapacity to the trustee or trustees, or other person or persons having authority to act for such person and persons incapable of acting for themselves; during which period of two months the person and persons so beneficially interested, or his, her, or their committee or committees, guardian or guardians, trustee or trustees, or other person or persons, having authority to act for him, her, or them, on his, her, or their behalf, shall be intitled to contract for the purchase thereof, in preference to any other person or persons; and any one coparcener, or joint tenant, or tenant in common, beneficially interested as aforesaid, shall have the like privilege of pre-emption, in respect of the whole of the estate comprised in any such lease or grant, by copy of court roll, on the refusal of any other coparcener, joint tenant, or tenant in common, to contract for the purchase of their respective shares; and such manors, messuages, lands, tenements, or hereditaments, shall not be sold to any other person or persons till after the expiration of such notice, unless the person or persons having the privilege of pre-emption on behalf of themselves or others, shall by

writing under his, her, or their hand or hands, waive the same, in which case such fee-simple and inheritance may be sold to any other person or persons, at any time before the expiration of such notice: Provided always that when any price shall have been offered for the purchase of any such manors, messuages, lands, tenements, or hereditaments, by any person or persons having such privilege of pre-emption as aforesaid, which shall not be accepted by the body politic or corporate, or company, or other person or persons proposing to sell the same, such manors, messuages, lands, tenements, or hereditaments, shall not at any time afterwards be sold to any other person or persons for a less price than the price so offered by the person or persons having such privilege of pre-emption as aforesaid, till after the expiration of two calendar months' further notice given to such last-mentioned person or persons, of the sale proposed to be made at such reduced price, (and which further notice is hereby required to be given in every such case), during which further period such person or persons shall have the like privilege of pre-emption as aforesaid, of such manors, messuages, lands, tenements, or hereditaments, at such reduced price: Provided also, that if such person or persons shall waive such privilege of pre-emption in manner aforesaid, such manors, messuages, lands, tenements, or hereditaments may be sold to any other person or persons at such reduced price, at any time before the expiration of such period: Provided also, that every such notice to any committee of any lunatic, or any guardian of any infant, or any other person having authority to act for any incapacitated person, shall be as valid and effectual to enable the sale of such manors, messuages, lands, tenements, or hereditaments, to any person or persons not having any interest in the subsisting lease or grant

thereof, after the expiration of such notice (or sooner in case of the waiver of the privilege of pre-emption by any such committee, guardian, or other person or persons having authority to act as aforesaid), as if such notice or waiver had been given or made to or by any person or persons of capacity by law to act for themselves."

S. 94. " And be it further enacted, that no sale or mortgage of any *copyhold or customary* messuages, lands, tenements, or hereditaments, by virtue of this act, shall extend or be construed to extend in anywise to prejudice or affect the right of any lord or lords, lady or ladies, of any manor of which the same may be holden, to such fine or fines as shall have been usual and accustomed, and of right ought to be yielded and paid to such lord or lords, lady or ladies, upon any alienation of, and admittance to such copyhold or customary messuages, lands, tenements, or hereditaments, nor to authorise any purchaser or mortgagee of any such copyhold or customary messuages, lands, tenements, or hereditaments, to enter and take any rents or profits thereof by virtue of this act, until such fine or fines shall have been duly paid: Provided always, that upon the production of the deed of sale or mortgage, and upon the payment or tender of such fine or fines as aforesaid, the lord or lords, lady or ladies, for the time being, of any such manor, shall, at the next or some subsequent court to be holden for such manor, upon request of the purchaser or mortgagee of any such copyhold or customary messuages, lands, tenements, or hereditaments, not only grant the same to him, her, or them, by copy of court roll, for such estate or interest as shall be sold or conveyed, reserving the usual and accustomed rents, customs, and services, but shall also at the same court admit him, her, or them, tenant or tenants of the same copyhold or customary lands or tenements, as other copy-

holders of the same manors have been wont to be admitted, and to receive his, her, or their fealty accordingly."

S. 118. " And be it further enacted, that in all cases where the land-tax charged upon any manors, messuages, lands, tenements, or hereditaments, belonging to any bodies politic or corporate (other than bishops, or other ecclesiastical corporations), or to any companies, or other person or persons, and granted out upon any beneficial lease or leases, or *by any copy or copies of court roll, or other grant, according to the custom of any manor*, for life or lives, or years absolute, or years determinable upon any life or lives, shall be redeemed by the monies arising from the sale or sales of the fee simple and inheritance of any part of such manors, messuages, lands, tenements, or hereditaments, then and in such case the respective manors, messuages, lands, tenements, and hereditaments, remaining unsold, shall, immediately after the redemption of such land-tax, be and become charged and chargeable, for the benefit of such bodies politic or corporate, or companies, or other person or persons, with such yearly sum or sums respectively, by way of rent charge, as shall be equal in amount to the land-tax charged thereon at the times of such redemption, which shall be applicable in their hands to the same uses and purposes, and in the same manner as the several yearly rents and profits of such manors, messuages, lands, tenements, or hereditaments, shall from time to time be applicable."

S. 119. " And be it further enacted, that every deed whereby any sale, mortgage, or grant, of any rent charge shall be made by virtue of this act, in relation to estates in England, shall be inrolled within six calendar months after the execution thereof (156), in one of his

(156) See 54 Geo. 3. c. 173. also 57 Geo. 3. c. 100. s. 24.
s. 11, extending this period. *Vide*

Majesty's courts of record at Westminster, or in the courts of the counties Palatine of Chester, Lancashire, or Durham, or in the courts of Great Sessions in Wales, as the case shall require, or be registered in the counties of Middlesex and York, in the manner required by law for conveyances of real estates, situated in those counties respectively; and all deeds and conveyances in relation to estates in Scotland, shall be executed and registered in the manner required by the law of Scotland, in respect of sales or charges of real estates: Provided always, that where the consideration expressed in any such deed, shall not exceed two hundred pounds, the registry thereof, with the proper officer appointed or to be appointed for the registry of contracts for the redemption of land-tax, shall be as valid and effectual as if the same were inrolled or registered in the manner hereinbefore directed, and such officer is hereby required to register the same gratis; and after the payment of the purchase or mortgage money into the Bank of England, or to the Receiver General, or his deputy in England, or to the collectors in Scotland (in cases where the same is by this act authorised to be paid to any Receiver General, or his deputy, or collector), in the manner hereinbefore directed, and after such inrollment or registry as aforesaid, every such deed of sale, mortgage, or grant, made by virtue of this act, shall be good, valid, and effectual in the law to all intents and purposes whatsoever." &c.

53 GEO. III. c. 123.

" An Act to amend and render more effectual several acts passed for the Redemption and Sale of the Land-tax."

[S. 2. Enacts that the provisions in the act of 42 Geo. 3. (see § 21. & 61. vide also § 93, ante p. 299.) under

which bodies politic, and other persons in possession, were permitted to contract for the redemption of land-tax, in preference to persons in remainder, &c., should cease; and that all bodies politic or corporate, or companies and persons aforesaid, might thereafter contract for and redeem such land-tax without preference to any of them otherwise than by priority of contract.]

[S. 31. Enacts that in order to provide for the purchase of any land-tax under the provisions of the act of 42 Geo. 3. by bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, it should be lawful for such bodies politic, &c. to sell any lands, tenements, or hereditaments belonging to them, or to mortgage the same, or to grant any rent charge out of the same, or to enfranchise any messuages, &c. holden by copy of court-roll, or other customary tenure of any manor belonging to such bodies politic, &c., and to sell and dispose of any heriots or fee-farm rents, chief rents, or quit rents, or other emoluments or advantages issuing or payable from or in respect of any freehold, or copyhold or customary manors, or other hereditaments, or incident thereto or arising therefrom, under the same regulations as are mentioned in the act of 42 Geo. 3.]

53 GEO. III. c. 142.

" An Act to explain and amend several acts relative to the Land-tax."

S. 9. " And whereas by the said first recited act, passed in the thirty-eighth year of the reign of his present Majesty, the commissioners for putting in execution that act are empowered to seize and secure, and to sell and dispose of the *copyhold estates of collectors* under that

act neglecting to pay sums of money by them received (157); but no provision is made by the said act for the manner of sale or transfer of the said copyhold estate, or for the admission of the purchasers thereof: Be it therefore enacted, that the commissioners for putting in execution the several acts relating to the land-tax shall, from and after the passing of this act, make conveyance of all such copyhold estates to the respective purchasers thereof, by deed indented, between any two or more of the said commissioners and the said purchasers respectively, and such sale shall be effectual to all intents and purposes, in like manner as the sale of copyhold estates of bankrupts, under and by virtue of statutes relating to bankrupts or any of them, by deed indented and inrolled: Provided always, that such person or persons to whom any such sale of copyhold lands, shall be made, shall, in like manner as the purchaser of the copyhold estates of bankrupts, before such time as he, or they, or any of them shall enter or take any profit of the said lands or tenements, agree and compound with the lords of the manors of whom the same shall be holden, for such fines or incomes as heretofore hath been most usual and accustomed to be yielded or paid therefore; and that upon every such agreement or composition, the said lords, for the time being, at the next court to be holden at or for the said manors, shall not only grant to the said vendee or vendees, upon request, the same copyhold or customary lands or tenements, by copy of court roll of the

(157) *Vide* a similar power, s. 52 of 43 Geo. 3. c. 99. (for consolidating certain provisions of acts relating to the duties under the management of the commissioners for the affairs of taxes, and amending the same), as to the copyhold estates of the collectors of any of the duties therein mentioned.

same manors, for such estate or interest as to them shall be so sold, and reserving the ancient rents, customs and services; but also in the same court admit them tenants of the same copyhold or customary lands, as other copyholders of the same manors have been wont to be admitted, and to receive their fealty, suit or service, according to the custom of the court of such manor."

43 GEO. III. c. 75.

" An Act to authorise the Sale or Mortgage of the Estates of persons found lunatic by inquisition in England or Ireland respectively; and the granting of leases of the same."

" Whereas great injury frequently happens to persons found lunatick or of unsound mind, and incapable of managing their affairs, by inquisitions taken in England and Ireland respectively, and the creditors of such persons are delayed in obtaining payment of their demands, for want of sufficient power to apply the property of such persons in discharge of their debts and engagements: And whereas the care and commitment of the custody of the persons, and estates of persons so found lunatick, or of unsound mind, have been usually entrusted by virtue of the King's sign manual to the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of the United Kingdom, and of Ireland respectively; and it would be beneficial to such persons, and their creditors, if power were given to dispose of their property, for payment of their debts, and performance of their engagements, under the controul of such Chancellor, Keeper, and Commissioners in England and Ireland respectively; be it therefore enacted by" &c., "that it shall and may be lawful for the Lord Chancellor, Lord Keeper, or Lords

Commissioners for the custody of the Great Seal of the United Kingdom, and of Ireland respectively, being entrusted by virtue of the King's sign manual, with the care and commitment of the custody of the persons, and estates of persons found lunatick, or of unsound mind, and incapable of managing their affairs, by inquisition taken in England and Ireland respectively, to order the *freehold and leasehold estates* (158) of such persons respectively to be sold, or charged and incumbered by way of mortgage or otherwise, as shall be deemed most expedient for the purpose of raising such sum or sums of money as shall be necessary for payment of the debts, and for performing the contracts or engagements of any such persons respectively, and the costs and charges attending the same, and attending such sale, mortgage, or incumbrance respectively, and to direct the committee or committees of the estate of such persons respectively, to execute in the name and on behalf of such persons respectively, conveyances of the estates so to be sold, mortgaged, or incumbered, *and to procure such admittance to, and make such surrenders of the copyhold estates* of such persons found lunatick or of unsound mind, and to do all such acts as shall be necessary to effectuate the same, in such manner as such Chancellor, Keeper, or Commissioners of the Great Seal of the United Kingdom and of Ireland respectively shall direct; which conveyances, so to be made in pursuance of any such order as aforesaid, shall be as good and effectual in law as if the same had

(158) That copyhold estates of a lunatic are within the meaning of this section of the act, may, I submit, be inferred from the power given to the Lord Chancellor &c.,

to direct the committee to procure admittance to and make surrenders of such copyhold estates; and also from the last section of the act.

been executed by every such person so found lunatick or of unsound mind respectively, when in his or her sound mind."

S. 2. " And be it further enacted, that in case there shall be any surplus of money to be raised by any such sale as aforesaid, after answering the purposes aforesaid, the same shall be applied and disposed of in the same manner as the estate sold would have been applied if this act had not been made."

S. 3. " And whereas many persons so found lunatick, or of unsound mind, may be seized and possessed of freehold and *copyhold* lands, tenements, and hereditaments, either for the term of their natural lives, or for some other estate, with power of granting leases and taking fines, reserving small rents on such leases for one, two, or three lives, in possession or reversion, or for some number of years determinable upon lives, or for terms of years absolutely; be it enacted, that in every such case all and every power of leasing such lands, tenements, and hereditaments, which is or shall be vested in such person so found lunatick, or of unsound mind, having a limited estate only, shall and may be executed by the committee or committees of the estate of such person, under the direction and order of the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of the United Kingdom and of Ireland respectively, being duly entrusted by virtue of the King's sign manual, with the care and commitment of the custody of the persons and estates of such persons; and such lease or leases so to be executed by the said committee and committees, under and by virtue of such order, shall be as good and effectual in law as if the same were executed by the said person so found lunatick, or of unsound mind, in his or her sound mind."

S. 4. " And whereas persons so found lunatick, or of unsound mind, may be seised or possessed of, and entitled to freehold or *copyhold* estates in fee or in tail, and an absolute interest in leasehold estates, and it may be for the benefit of such persons that leases or underleases should be made of such estates for terms of years, and especially to encourage the erection of buildings thereon, or repairing buildings actually being thereon, or otherwise improving the same; be it enacted, that it shall and may be lawful for the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of the United Kingdom and of Ireland respectively, entrusted by virtue of the King's sign manual, with the care and commitment of the custody of the persons and estates of such persons respectively, to order and direct a committee or committees of the estate of such lunatick, to make such leases of the freehold, copyhold, or leasehold estates of such persons respectively, according to his or her interest therein respectively, and to the nature of the tenures of such estates respectively, for such term or terms of years, and subject to such rents and covenants, as the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of the United Kingdom and of Ireland respectively, entrusted as aforesaid, shall direct; and that all and every such lease or leases made by such committee or committees, under and by virtue of the said order, as such Lord Chancellor, Lord Keeper, or Lords Commissioners respectively, shall make thereupon, shall be as good and valid in the law, as if the same had been executed by the persons so found lunatick, or of unsound mind respectively, in his or her sound mind."

[S. 5. Directs that the acts of such committees shall

be as binding as if the lunatic had been of sound mind, and had personally done such acts:}]

S. 6. " Provided nevertheless, and be it enacted, that nothing in this act contained shall extend, or be construed to extend, to subject any part of the freehold, copyhold, or leasehold estates of any person found lunatick, or of unsound mind, to the debts or demands of his creditors, otherwise than as the same are now subject or liable, by due course of law; but only to authorize the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of the United Kingdom and of Ireland respectively, being intrusted by virtue of the King's sign manual, with the care and commitment of the custody of the persons and estates of persons so found lunatick, or of unsound mind, to make order in such cases as are hereinbefore mentioned, when the same shall be deemed for the benefit and advantage of such persons so found lunatick, or of unsound mind, and incapable of managing his or her affairs (159)."

47 GEO. III. Sess. 2. c. 8.

" An Act concerning common recoveries suffered in copyhold or customary courts by attorney."

" Whereas it is expedient that persons who can now suffer common recoveries of copyhold or customary tenements, in person but not by attorney, should be enabled to suffer the same by attorney as well as in person: May it therefore please" &c. " and be it enacted by" &c.

(159) See act 59 Geo. 3. c. 80. s. 2. post. p. 313.

Vide also 4 Geo. 2. c. 10.; and 1 & 2 Geo. 4. c. 114, for the conveyance of estates vested in

idiots and lunatics, in trust, or by way of mortgage. And see ante pt. 1. pa. 101. *Ex parte Currie*, 1. Jac. and Walk. 643.

* that it shall and may be lawful for every person not being under coverture, and for every feme covert, (such feme covert being solely and secretly examined by the lord or lords, lady or ladies of the maner or manors whereof the copyhold or customary tenements, a common recovery or common recoveries of which is or are proposed to be suffered, shall be holden, or by his, her, or their steward or stewards, or by the deputy or deputies of such steward or stewards) to appoint any person or persons to be his, her, or their attorney or attorneys for the purpose of surrendering the copyhold or customary tenements, a common recovery or common recoveries of which shall be proposed to be suffered, to the use of any person or persons, to make him or them tenant or tenants to the plaint; and also to appoint *any other person or persons* to appear for the person or persons so appointing as vouches or vouchees, and to enter into the usual warranty, and to do all other lawful and necessary acts for the suffering and perfecting of such common recovery or common recoveries respectively, and to direct the demandant or demandants in such common recoveries respectively, to surrender the tenements so recovered, when or after such recovery or recoveries shall be suffered and perfected, to such uses as shall be declared in the instrument by which such attorney or attorneys shall be respectively appointed; and that the surrender and surrenders, and common recovery and common recoveries which shall be had, acknowledged, and suffered as aforesaid, shall have the like effect, but no other, as such surrender and surrenders, and common recovery and common recoveries would have had if the party or parties who shall acknowledge such surrender or surrenders, and suffer such common recovery or common recoveries by attorney, and give such directions as aforesaid, had

appeared in court in his, her, or their person or respective persons, and acknowledged the said surrender or surrenders, and suffered the same recovery or recoveries, and had joined in the surrender or surrenders to be made by such demandant or demandants."

59 GEO. III. c. 80.

"An Act concerning Common Recoveries to be suffered by attorney in courts of Antient Demesne; and to explain an Act of his present Majesty, relative to the Sale or Mortgaging of Estates of Lunatics."

"Whereas it is expedient that persons who can now suffer in person, and not by attorney, common recoveries of such of the lands, tenements, and hereditaments, held in antient demesne, as are not held by copy of court roll, should be enabled to suffer the same by attorney as well as in person: May it therefore please your Majesty that it may be enacted; and be it enacted by" &c. "that it shall and may be lawful for all and every persons and person, not being under the disability of coverture, and for all and every femes covert and feme covert (every such feme covert being solely and secretly examined by the lord or lords, lady or ladies of the manor or manors whereof the lands, tenements, and hereditaments held in antient demesne, but not by copy of court roll, of which a common recovery or common recoveries is or are proposed to be suffered, shall be holden, or by his, her, or their steward or stewards, or by the deputy or deputies of such steward or stewards) to appoint any person or persons to be their, his, or her attorney or attorneys, to appear for the persons or person so appointing, either as tenants or tenant to the plaint or writ, or as vouchees or vouchee, and, as the case may require, either to vouch

over to warranty, or to enter into the usual warranty, and also vouch over to warranty, and likewise to do all other lawful and necessary acts for the suffering and perfecting of such common recovery or common recoveries respectively; and that the common recovery and common recoveries which shall be had and suffered as aforesaid, shall have the like effect, but no other, as such common recovery or common recoveries would have had, if the persons or person who shall so by attorney suffer or join in suffering such common recovery or common recoveries had appeared in court in person, and suffered or joined in suffering such common recovery or common recoveries."

S. 2. "And whereas an act was passed in the forty-third year of the reign of his present Majesty, intituled *"An Act to authorise the Sale or Mortgage of the Estates of persons found lunatic by inquisition, in England or Ireland respectively, and the granting leases of the same;* and doubts have arisen, whether the provisions of the said act extend to the case of lands held in antient demesne or by copy of court roll; and it is expedient that such doubts should be removed; be it therefore declared and enacted, that such of the powers and provisions of the said recited act as authorise the sale or mortgage of estates belonging to lunatics, shall be deemed and taken to extend to such estates as are held by antient demesne or by copy of court roll."

STAMP ACT, 48 GEO. III. c. 149.—[2nd July, 1808.]

S. 22. "And be it further enacted, that from and after the 10th day of October, 1808, in all cases of the sale of any lands, tenements rents, annuities, or other property, real or personal, heritable or moveable, or of any right, title, interest, or claim, in, to, out of, or upon any lands,

appeared in court in his, her, or their person or respective persons, and acknowledged the said surrender or surrenders, and suffered the same recovery or recoveries, and had joined in the surrender or surrenders to be made by such demandant or demandants."

59 GEO. III. c. 80.

"An Act concerning Common Recoveries to be suffered by attorney in courts of Antient Demesne; and to explain an Act of his present Majesty, relative to the Sale or Mortgaging of Estates of Lunatics."

"Whereas it is expedient that persons who can now suffer in person, and not by attorney, common recoveries of such of the lands, tenements, and hereditaments, held in antient demesne, as are not held by copy of court roll, should be enabled to suffer the same by attorney as well as in person: May it therefore please your Majesty that it may be enacted; and be it enacted by" &c. "that it shall and may be lawful for all and every persons and person, not being under the disability of coverture, and for all and every femes covert and feme covert (every such feme covert being solely and secretly examined by the lord or lords, lady or ladies of the manor or manors whereof the lands, tenements, and hereditaments held in antient demesne, but not by copy of court roll, of which a common recovery or common recoveries is or are proposed to be suffered, shall be holden, or by his, her, or their steward or stewards, or by the deputy or deputies of such steward or stewards) to appoint any person or persons to be their, his, or her attorney or attornies, to appear for the persons or person so appointing, either as tenants or tenant to the plaint or writ, or as vouches or vouchee, and, as the case may require, either to vouch

over to warranty, or to enter into the usual warranty, and also vouch over to warranty, and likewise to do all other lawful and necessary acts for the suffering and perfecting of such common recovery or common recoveries respectively; and that the common recovery and common recoveries which shall be had and suffered as aforesaid, shall have the like effect, but no other, as such common recovery or common recoveries would have had, if the persons or person who shall so by attorney suffer or join in suffering such common recovery or common recoveries had appeared in court in person, and suffered or joined in suffering such common recovery or common recoveries."

S. 2. "And whereas an act was passed in the forty-third year of the reign of his present Majesty, intituled *"An Act to authorise the Sale or Mortgage of the Estates of persons found lunatic by inquisition, in England or Ireland respectively, and the granting leases of the same;* and doubts have arisen, whether the provisions of the said act extend to the case of lands held in antient demesne or by copy of court roll; and it is expedient that such doubts should be removed; be it therefore declared and enacted, that such of the powers and provisions of the said recited act as authorise the sale or mortgage of estates belonging to lunatics, shall be deemed and taken to extend to such estates as are held by antient demesne or by copy of court roll."

STAMP ACT, 48 GEO. III. c. 149.—[2nd July, 1808.]

S. 22. "And be it further enacted, that from and after the 10th day of October, 1808, in all cases of the sale of any lands, tenements rents, annuities, or other property, real or personal, heritable or moveable, or of any right, title, interest, or claim, in, to, out of, or upon any lands,

tenements, rents, annuities, or other property, where a duty is imposed on the conveyance thereof in the schedule hereunto annexed, in proportion to the amount of the purchase or consideration money, therein or thereupon expressed, the full purchase or consideration money which shall be directly or indirectly paid, or secured, or agreed to be paid for the same, shall be truly expressed and set forth in words at length, in or upon the principal or only deed or instrument whereby the land or other thing sold shall be granted, assigned, transferred, released, renounced, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction; and also where, upon the sale of any annuity, easement, servitude, or other right, not before in existence, the same shall not be created by actual grant or conveyance, but shall only be secured by bond, warrant of attorney, covenant, contract, or other security, the full purchase or consideration money, which shall be directly or indirectly paid, or secured, or agreed to be paid for the same, shall be truly expressed and set forth in words at length, in or upon the bond or other instrument or instruments by which the same shall be secured," [and in default of so setting forth the consideration, the purchaser and seller are subjected to a penalty of fifty pounds, and to the payment of five times the amount of the excess of duty which would have been payable in respect of the full purchase money, beyond the amount of the duty actually paid.]

S. 30. " And be it further enacted, that from and after the 10th day of October, 1808, where any *copyhold or customary* lands or hereditaments, shall be proposed to be surrendered in court, the person or persons proposing to surrender the same shall deliver to the steward of the manor or honour, whereof such lands or hereditaments

shall be holden; a note in writing, stating whether the surrender proposed is upon a sale, or not upon a sale, and in the former case specifying the amount of the purchase or consideration money agreed upon for such lands or hereditaments, to the intent that the same may be inserted and set forth, in words at length, in or upon the copy of court roll, to be afterwards made out of such surrender, pursuant to the directions of this act; and until such note in writing shall be delivered, the lord or lady, or steward, of the manor or honour, shall not accept or take the proposed surrender, on pain of forfeiting for every such offence, the sum of fifty pounds; and where the proposed surrender shall be upon a sale, if the steward shall neglect to insert the said purchase or consideration money, in or upon the copy of court roll, to be afterwards made out of such surrender, in words at length, he shall for every such offence forfeit the sum of fifty pounds; and if upon the sale of any such lands or hereditaments, any person or persons shall in the note so to be delivered as aforesaid, state the proposed surrender to be not upon a sale, he, she, or they shall, for every such offence, forfeit the sum of one hundred pounds."

S. 31. "And be it further enacted, that from and after the said 10th day of October, where any *copyhold* or *customary* lands or hereditaments shall be intended to be conveyed to any person or persons (either upon the sale or mortgage thereof, or otherwise) by means of a surrender made out of court, or by a deed of bargain and sale, or other deed, by commissioners named in a commission of bankrupt, or by executors or others, by virtue of a power given by will or by act of parliament, the lord or lady, or steward of the manor or honour, whereof such lands or hereditaments shall be parcel or be holden, shall not inrol any such surrender or deed, or accept any pre-

ment thereof, or admit any person to be tenant of such lands or hereditaments, under or by virtue of the same respectively, unless such deed or surrender, or the memorandum of such surrender, shall be duly stamped with the duty hereby charged thereon respectively, on pain of forfeiting, for every such offence, the sum of fifty pounds."

S. 32. "And be it further enacted, that if any lord or lady, or steward of any manor or honour, shall, after the said tenth day of October, accept or take any surrender, or admit any person tenant of any *copyhold* or *customary* lands or hereditaments, out of court, or make any voluntary grant of any such lands or hereditaments, out of court, or grant any license to demise any such lands or hereditaments, out of court, without causing the same, or some memorandum thereof respectively, to be put in writing on vellum, parchment, or paper, duly stamped with the proper duty hereby charged thereon respectively, then, and in every such case, he or she shall, for every such offence, forfeit the sum of fifty pounds."

S. 33. "And be it further enacted, that in all cases of surrenders, admittances, and voluntary grants of or to any *copyhold* or *customary* lands or hereditaments, and in all cases of licenses to demise any such lands or hereditaments, which shall be taken, made, or granted in court, after the tenth day of October, 1808, the steward of the manor or honour, whereof such lands or hereditaments shall be parcel or be holden, shall make out a copy of court roll of every such surrender, admittance, voluntary grant, and license to demise, on vellum, parchment, or paper, duly stamped according to the directions of this act, within four calendar months next after the surrender, admittance, voluntary grant, or license, shall be made or granted, and shall deliver the same to the party or parties

entitled thereto, or any other person authorised to receive the same, whenever the same shall be called for, after the expiration of such four calendar months; and if the same shall not be called for, then the steward shall deliver the same to the bailiff of the manor or honour, or to the crier of the court, or to some copyhold or customary tenant of the manor or honour, for the use of the party or parties entitled thereto, at the next general court to be holden for the said manor or honour; and if any such steward shall neglect to make out and deliver such copy or copies of court roll, in the manner and within the time aforesaid, he shall forfeit the sum of fifty pounds for every such surrender, admittance, voluntary grant and license to demise, of which he shall neglect to make out and deliver a copy of court roll, in the manner and within the time aforesaid; and the stamp duty, payable in respect of every such copy of court roll, shall be a debt to his Majesty, his heirs and successors, of the steward so neglecting to make out and deliver the same, whether he shall have received the duty or not; and if he shall not have received the duty, the same shall also be a debt to his Majesty, his heirs and successors, of the party or parties intitled to such copy of court roll; and the said steward shall also be bound to make out and deliver such copy of court roll to the party or parties intitled thereto, whenever afterwards the same shall be demanded, without being paid any fees for the same; and if any fees shall have been previously paid to him for the same, such fees shall be deemed to have been paid without consideration, and the party or parties, who paid such fees, his, her, or their executors or administrators, shall be entitled to recover back the same, in an action for money had and received to his, her, or their use, with full costs of suit."

S. 34. " And be it further enacted, that it shall be lawful for the steward of any manor or honour, previously to the acceptance of any surrender, or the granting or making of any admittance, voluntary grant, or license to demise, in court, from and after the tenth day of October, 1808, to demand and insist on the payment of his lawful fees for the same, and for the copy of court roll to be made out thereof, together with the stamp duty payable on such copy of court roll; and in case of non-payment of such fees and stamp duty, it shall be lawful for the lord or lady, or steward of the manor, to refuse to accept the surrender, or to grant the admittance or license, or to make the voluntary grant, which shall be proposed or have been contracted for, until such fees and stamp duties shall be paid."

[N. B. The schedule annexed to this act is repealed by the following act.]

STAMP ACT, 55 GEO. III, c. 184.—[11th July, 1815.]

[S. 1. Directs that the duties imposed on deeds, &c. by the last act should cease from the 31st August, 1815.]

[S. 2. Substitutes the duties in the schedule annexed to the present act, from and after the 31st August, 1815.]

[S. 8. Enacts that the powers, provisions, penalties, &c. in former acts shall extend to this act.]

[S. 30. Exempts from the *ad valorem* duty, all conveyances made after the 31st August, 1815, of property contracted to be sold before the 12th April, 1808, which under the provisions of the act of 48th Geo. 3. should have been exempted from the *ad valorem* duty thereby granted.]

[S. 31. Also exempts the conveyances of annuities or rent charges, on the re-purchase thereof.]

SCHEDULE.

Part the first.

CONVEYANCE, whether grant, disposition, lease, assignment, transfer, release, renunciation, or of any other kind or description whatsoever, upon the sale of any lands, tenements, rents, annuities or other property, real or personal, heritable or moveable, or of any right, title, interest or claim in, to, out of or upon any lands, tenements, rents, annuities, or other property; that is to say, for and in respect of the principal or only deed, instrument or writing, whereby the lands or other things sold shall be granted, leased, assigned, transferred, released, renounced or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction.

Where the purchase or consideration money therein or thereupon expressed shall not amount to 20l. 0 10 0

And where the same shall amount to 20l. and not amount to 50l. 1 0 0

And where the same shall amount to 50l. and not amount to 150l. 1 10 0

And where the same shall amount to 150l. and not amount to 300l. 2 0 0

And where the same shall amount to 300l. and not amount to 500l. 3 0 0

And where the same shall amount to 500l. and not amount to 750l. 6 0 0

And where the same shall amount to 750l. and not amount to 1,000l. 9 0 0

And where the same shall amount to 1,000l. and not amount to 2,000 12 0 0

And where the same shall amount to 2,000l. and not
amount to 3,000l. 25 0 0

And where the same shall amount to 3,000l. and not
amount to 4,000l. 35 0 0

And where the same shall amount to 4,000l. and not
amount to 5,000l. 45 0 0

And where the same shall amount to 5,000l. and not
amount to 6,000l. 55 0 0

And where the same shall amount to 6,000l. and not
amount to 7,000l. 65 0 0

And where the same shall amount to 7,000l. and not
amount to 8,000l. 75 0 0

And where the same shall amount to 8,000l. and not
amount to 9,000l. 85 0 0

And where the same shall amount to 9,000l. and not
amount to 10,000l. 95 0 0

And where the same shall amount to 10,000l. and not
amount to 12,500l. 110 0 0

And where the same shall amount to 12,500l. and not
amount to 15,000l. 180 0 0

And where the same shall amount to 15,000l. and not
amount to 20,000l. 170 0 0

And where the same shall amount to 20,000l. and not
amount to 30,000l. 240 0 0

And where the same shall amount to 30,000l. and not
amount to 40,000l. 350 0 0

And where the same shall amount to 40,000l. and not
amount to 50,000l. 450 0 0

And where the same shall amount to 50,000l. and not
amount to 60,000l. 550 0 0

And where the same shall amount to 60,000l. and not
amount to 80,000l. 650 0 0

And where the same shall amount to 80,000l. and not
amount to 100,000l. 800 0 0

And where the same shall amount to 100,000 or upwards (160) 1,000 0 0

And where any freehold lands or hereditaments in England shall be conveyed by a deed of feoffment, with or without any letter or letters of attorney therein contained to deliver or receive seisin, or by a deed of bargain and sale inrolled; such deed of feoffment or bargain and sale, unless accompanied with a lease and release shall be charged with a further duty as follows:

If the purchase or consideration money therein or thereupon expressed, shall be under 20l. 0 10 0

If it shall amount to 20l. and not amount to 50l. 0 15 0

If it shall amount to 50l. and not amount to 150l. 1 0 0

If it shall amount to 150l. or upwards 1 15 0

But if there shall be both a feoffment and a bargain and sale inrolled, then the said further duty shall not attach on either.

Note.—The purchase or consideration money is to be truly expressed and set forth in words at length, in or upon every such principal or only deed or instrument of conveyance.

And where any lands or other property, of different tenures or holdings, or held under different titles, contracted to be sold at one entire price for the whole, shall be conveyed to the purchaser in separate parts or parcels, by different deeds or instruments, the purchase or consideration money shall be divided and apportioned in

(160.) As the act specifies only definite gross sums, a conveyance in consideration of an annuity would seem to be a *casus omissus*, and not to require an *ad valorem* duty.

such manner as the parties shall think fit, so that a distinct price or consideration for each separate part or parcel may be set forth in or upon the principal or only deed or instrument of conveyance relating thereto; which shall be charged with the said *ad valorem* duty in respect of the price or consideration money therein set forth.

And where any lands or other property, contracted to be purchased by two or more persons jointly, or by any person for himself and others, or wholly for others, at one entire price for the whole, shall be conveyed; in parts or parcels, by separate deeds or instruments, to the persons for whom the same shall be purchased, for distinct parts or shares of the purchase money; the principal or only deed or instrument of conveyance, of each separate part or parcel, shall be charged with the said *ad valorem* duty, in respect of the sum of money therein specified as the consideration for the same. But if separate parts or parcels of such lands or other property shall be conveyed to or to the use of or in trust for different persons, in and by one and the same deed or instrument, then such deed or instrument shall be charged with the said *ad valorem* duty, in respect of the aggregate amount of the purchase or consideration monies therein mentioned to be paid or agreed to be paid, for the lands or property thereby conveyed.

And where any person, having contracted for the purchase of any lands or other property, but not having obtained a conveyance thereof, shall contract to sell to any other person, and the same shall in consequence be conveyed immediately to the sub-purchaser; the principal or only deed or instrument of conveyance shall be charged with the said *ad valorem* duty, in respect of the purchase or consideration money therein mentioned to be paid, or agreed to be paid, by the sub-purchaser.

And where any person, having contracted for the purchase of any lands or other property, but not having obtained a conveyance thereof, shall contract to sell the whole or any part or parts thereof, to any other person or persons, and the same shall in consequence be conveyed, by the original seller, to different persons, in parts or parcels; the principal or only deed or instrument of conveyance, of each part or parcel thereof, shall be charged with the said *ad valorem* duty, in respect only of the purchase or consideration money which shall be therein mentioned to be paid or agreed to be paid for the same, by the person or persons to whom or to whose use, or in trust for whom the conveyance shall be made, without regard to the amount of the original purchase money.

And in all cases of such sub-sales as aforesaid, the sub-purchasers, and the persons immediately selling to them, shall be deemed and taken to be the purchasers and sellers, within the intent and meaning of the provisions and regulations of the aforesaid act of the forty-eighth year of his Majesty's reign, relating to the *ad valorem* duties on conveyances on the sale of property thereby imposed, and which are to be observed and enforced with regard to the said *ad valorem* duties hereby granted.

But where any sub-purchaser shall take an actual conveyance of the interest of the person immediately selling to him, which shall be chargeable with the said *ad valorem* duty, in respect of the purchase or consideration money paid, or agreed to be paid by him, and shall be duly stamped accordingly; any deed or instrument of conveyance to be afterwards made to him, of the property in question, by the original seller, shall be exempted from the said *ad valorem* duty, and be charged

only with the duty on deeds or instruments of the same kind not upon a sale.

And where any lands or other property separately contracted to be purchased of different persons, at separate and distinct prices, shall be conveyed to the purchaser, or as he shall direct, in and by one and the same deed or instrument; such deed or instrument shall be charged with the said *ad valorem* duty, in respect of the aggregate amount of the purchase or consideration monies, therein mentioned to be paid or agreed to be paid for the same.

And where any lands, or other property shall be sold and conveyed, in consideration, wholly or in part, of any sum of money charged thereon by way of mortgage, wadset or otherwise, and then due and owing to the purchaser, or shall be sold and conveyed, subject to any mortgage, wadset, bond, or other debt, or to any gross or entire sum of money, to be afterwards paid by the purchaser, such sum of money or debt shall be deemed the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect whereof the said *ad valorem* duty is to be paid.

And to prevent doubts respecting what shall be deemed the principal deed or instrument of conveyance, in certain cases, it is hereby declared :

That where any lands or hereditaments, in England, shall be conveyed by bargain and sale inrolled, and also by lease and release, or feoffment with or without any such letter or letters of attorney therein contained as aforesaid; the release or feoffment shall be deemed the principal deed; and the bargain and sale shall be charged only with the duty hereby imposed on deeds in general; (See *Deed*.)—but the same shall not be inrolled or be

available, unless also stamped for testifying the payment of the *ad valorem* duty on the release or feoffment.

And where any lands or hereditaments shall be conveyed by lease and release, and also by feoffment, with or without any such letter or letters of attorney therein contained as aforesaid; the release shall be deemed the principal deed; and the feoffment shall be charged only with the duty hereby imposed on deeds in general. (See *Deed.*)—But the same shall not be available, unless also stamped for testifying the payment of the *ad valorem* duty on the release.

And where any *copyhold* or *customary* estate shall be conveyed, by a deed of bargain and sale, by the commissioners named in a commission of bankrupt, or by executors or others, by virtue of a power given by will, or by act of parliament, or otherwise, where a surrender shall not be necessary, the deed of bargain and sale shall be deemed the principal instrument.

And in other cases of *copyhold* or *customary* estates, the surrender or voluntary grant, or the memorandum thereof respectively, if made out of court, or the copy of court roll of the surrender or voluntary grant, if made in court, shall be deemed the principal instrument.

And copies of court roll, made after the 31st day of August, 1815, of surrenders and voluntary grants made in court before or upon that day, and subsequent to the 10th day of October, 1806, shall be charged with the said *ad valorem* duties. But copies of court roll, of surrenders, and voluntary grants made before or upon the 10th day of October, 1806, shall not be liable thereto.

And grants, and copies of court roll of grants, of *copyhold* or *customary* estates for a life or lives, are to be charged, as well as those for any greater interest.

And where in Scotland there shall be a disposition or

assignment, executed by the seller, and any other instrument or instruments, writing or writings, to complete the title, the disposition or assignment shall be deemed the principal instrument.

And where, upon the sale of any annuity or other right not before in existence, the same shall not be created by actual grant or conveyance, but shall only be secured by bond, warrant of attorney, covenant, contract, or otherwise; the bond or other instrument, by which the same shall be secured, or some one of such instruments, if there be more than one, shall be deemed and taken to be liable to the same duty as an actual grant or conveyance.

And in the case of leases or tacks, where a yearly rent of 20l. or upwards shall be reserved, as part of the consideration for the same, there shall be charged a further duty; for which see title, *Lease*.

And where the principal or only deed or instrument of conveyance, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of 1 0 0

And where there shall be several deeds, instruments, or writings for completing the title to the property sold; such of them as are not liable to the said *ad valorem* duty shall be charged with the duty, to which the same may be liable, under any general or particular description of such deeds, instruments, or writings contained in this schedule.

And where, in any case not hereby expressly provided for, of several deeds, instruments, or writings, a doubt shall arise which is the principal, it shall be lawful for

the parties to determine for themselves which shall be so deemed, and to pay the said *ad valorem* duty thereon accordingly; and, if necessary, the other deeds, instruments, or writings, on which the doubt shall have arisen, shall be stamped with a particular stamp for denoting or testifying the payment of the *ad valorem* duty; upon all the deeds or instruments being produced, and appearing to be duly stamped in other respects,

And where there shall be duplicates of any deed or instrument, chargeable with the said *ad valorem* duty, exceeding 2l. one of them only shall be charged therewith, and the other or others shall be charged with the ordinary duty on deeds or instruments of the same kind not upon a sale; and on the whole being produced, duly stamped as hereby required, the latter shall also be stamped with a particular stamp for denoting or testifying the payment of the said *ad valorem* duty,

And where any deed or instrument, operating as a conveyance on the sale of any property, shall operate also as a conveyance of any other than the property sold by way of settlement, or for any other purpose, or shall also contain any other matter or thing besides what shall be incident to the sale and conveyance of the property sold, or relate to the title thereto; every such deed or instrument shall be charged, in addition to the duty to which it shall be liable as a conveyance on the sale of property, and to any progressive duty to which it may also be liable, with such further stamp-duty as any separate deed, containing the other matter, would have been chargeable with, exclusive of the progressive duty.

Exemptions from the preceding duties on conveyances upon the sale of lands, &c.

All surrenders and other instruments, relating only to

copyhold or customary estates, whose clear yearly value shall not exceed twenty shillings; but which are hereinafter otherwise charged.

All transfers of shares in the stock and funds of the governor and company of the Bank of England, and of the South Sea and East India Companies; but which are hereinafter otherwise charged.

All leases and tacks in consideration of a fine or gratum, for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, by whomsoever granted.

All leases in consideration of a fine for a term absolute, not exceeding twenty-one years, granted by ecclesiastical corporations, aggregate or sole.

And all voluntary grants made by the lord or lady of any manor of any copyhold, or customary lands or hereditaments for a life or lives, for a pecuniary consideration, and the copies of court roll of such voluntary grants.

All which leases, tacks, grants, and copies are hereinafter charged with ordinary duty.

[The act exempts from the preceding and all other stamp duties, except the duty on the receipt for the consideration money, conveyances of rents purchased under the act 34 Geo. 3. c. 75. s. 14. for the better management of the land revenue of the crown, and for the sale of fee farm rents, &c. on subsequent sales thereof to the owners of the lands charged therewith, where the consideration money does not exceed £10.]

COPYHOLD estates; and *customary* estates, passing by surrender and admittance, or by admittance only, and not by deed; instruments relating thereto, not otherwise charged under the head of mortgage, or of conveyance upon the sale of lands; viz.

Any surrender made out of court, or the memorandum thereof; where the clear yearly value of the estate shall exceed twenty shillings 1 0 0

And where the same shall not exceed twenty shillings. 0 5 0

See also *Conveyance* upon the sale of lands, &c. and *Mortgage*.

Any admittance out of court, or the memorandum thereof; where the clear yearly value of the estate shall exceed twenty shillings 1 0 0

And where the same shall not exceed twenty shillings 0 5 0

And where both a surrender and admittance, or more than one surrender or admittance, or the memorandum thereof, shall be contained in the same piece of vellum, parchment, or paper, whether upon a sale, mortgage, or other occasion, the proper duty shall be paid, in respect to each surrender and each admittance (161).

(161) It has been doubted whether this clause does not require a distinct stamp for each separate copyhold included in one surrender or admittance, but the only object of it was, I submit, to impose a separate stamp on each surrender and each admittance, without any distinction between the case of a surrender of, or, an admittance to one entire copyhold, and that of a surrender of, or an admittance to an estate held by two or more distinct copies.

This construction is favored by the qualification in the 38 Geo. 3.

c. 85. of the provisions of the act of 37 Geo. 3. c. 90., in respect to the multiplication of stamps on surrenders of and admittances to copyhold estates; and by the total repeal of both those acts by the stat. 44 Geo. 3. c. 98.

N.B. By the 11th sect. of the act of 37 Geo. 3. it was provided that for and in respect of each and every copyhold tenement of the value of 20s. *per annum* or upwards, mentioned in any surrender, admittance, or copy of court roll, of any honour or manor, and each and every custom-right or

And where any surrender or admittance, or the memorandum thereof, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further progressive duty of 1 0 0

The copy of court roll of any surrender made in court, where the clear yearly value of the estate shall exceed twenty shillings 1 0 0

And where the same shall not exceed twenty shillings 0 5 0

See also conveyances upon the sale of lands, &c. and mortgage.

The copy of court roll of any admittance in court, where the clear yearly value of the estate shall exceed twenty shillings 1 0 0

tenant-right tenement, not being copyhold (of the like value,) mentioned in any surrender, admittance, or instrument of admittance, *whereupon a several fine should be payable to the lord*, or a several fee payable to the steward, a distinct and several stamp duty should be charged.

And by the 1st sect. of the act of 38th Geo. 3. it was provided that distinct and several stamp duties should not be required, except in those cases where the tenements mentioned in the same surrender, admittance, copy or instrument of admittance, should, be-

fore the passing of the said act, [of 37 Geo. 3.], have been surrendered, granted or conveyed, in and by different surrenders, admittances, copies or instruments of admittance, in which cases a several and distinct stamp duty should be charged, in respect of each and every such tenement of the value of 20s. *per annum* or upwards, which at any time thereafter should be added to any other tenement, or mentioned therewith, to be surrendered, granted, or conveyed in or by the same surrender, admittance, copy or instrument of admittance.

And where the same shall not exceed twenty shillings 0 5 0

And where copies of both a surrender and admittance, or of more than one surrender or admittance, shall be contained in the same piece of vallum, parchment or paper, whether upon a sale, mortgage or other occasion, the proper duty shall be paid, in respect of each surrender and each admittance, except in the case of a recovery hereinafter provided for (162).

And where the copy of any such surrender or admittance, together with any schedule, receipt or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words, contained therein, over and above the first 1,080 words, a further *progressive* duty of 1 0 0

The copy of court roll of the several surrenders, admittances and other acts, which shall take place in court, for the purpose of perfecting a *common recovery* of any entailed copyhold or customary estate or estates, tenement or tenements, from the surrender to make a tenant of the *præcipe*, down to the admittance of the tenant in tail, in fee, or to the admittance for life of the former tenant for life, with remainder to the tenant in tail, in fee, upon the surrender of the demandant, both inclusive; or from the surrender to make a tenant to the *præcipe*, inclusive, to the admittance of the tenant in tail, or tenant for life, otherwise than as aforesaid, or to the admittance of any other person, upon the surrender of the demandant, exclusive; where the clear yearly value of the estate shall exceed twenty shillings

Five times 1 0 0

And where the same shall not exceed twenty shillings Five times 0 5 0

And if the copy of court roll of any other admittance or surrender, admittances or surrenders, shall be contained in the same piece of vellum, parchment or paper, with the copy of court roll of the several surrenders, admittances, and other acts for the purpose aforesaid; the same shall be charged with such and the same duty or duties, as if the same had been written upon a separate piece of vellum, parchment or paper, over and above the said duties hereby imposed on the copy of court roll of the recovery.

Any *voluntary grant* by the lord or lady, or steward of any manor, made out of court, or the memorandum thereof, with or without admittance thereon; where the clear yearly value of the estate shall exceed twenty shillings Twice 1 0 0

And where the same shall not exceed twenty shillings Twice 0 5 0

See also *conveyance* upon the sale of lands, &c. and *mortgage*.

The *copy of court roll* of any voluntary grant made in court, by the lord or lady, or steward of any manor, with or without admittance thereon;—where the clear yearly value of the estate shall exceed twenty shillings Twice 1 0 0

And where the same shall not exceed twenty shillings Twice 0 5 0

See also *conveyance* upon the sale of lands, &c. and *mortgage*.

And where any voluntary grant, or the memorandum, or copy of court roll thereof, together with any schedule, receipt, or other matter put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive duty* of 1 0 0

Any licence to demise, or the memorandum thereof, if granted out of court; and the copy of court roll of any licence to demise, if granted in court; where the clear yearly value of the estate shall exceed twenty shillings 1 0 0

And where the same shall not exceed twenty shillings 0 5 0

Exemptions from the preceding and all other stamp duties.

Original surrenders out of court, and copies of court roll of surrenders in court, to the uses of a will, or to a trustee for the uses or purposes of a will.

The court rolls or books of any manor, wherein the proceedings relating thereto shall be entered or minuted.

See also the general exemptions at the end of this part of the schedule.

EXCHANGE.—Any deed whereby any lands or other hereditaments, or heritable subjects in England or Scotland shall be conveyed, or any *copyhold or customary* lands or hereditaments in England shall be covenanted to be surrendered, *in exchange* for other lands, or hereditaments, or heritable subjects;

If no sum of money, or only a sum under 300*l.* shall be paid or agreed to be paid for equality of exchange; the ordinary duty of 1 15 0

And if a sum of 300*l.* or upwards shall be paid or agreed to be paid for equality of exchange.

The same *ad valorem* duty as for a conveyance on the sale of lands for a sum of money equal to the sum so paid or agreed to be paid.

And where any such deed of exchange, together with any schedule receipt, or other matter put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a farther *progressive* duty of,

(If the deed be liable in the first instance to a duty of 1*l.* 15*s.* 1 5 0

Or if liable to a higher duty in the first instance 1 0 0

And any duplicate of any such deed of exchange shall be charged with the same duty or duties; and if the exchange shall be effected or secured by separate conveyances or covenants, by distinct deeds, each deed shall be charged with the same duty or duties.

And in case there shall be more than one deed for completing the title to the lands or other hereditaments, or heritable subjects conveyed by either party, the principal deed only shall be charged under this head of exchange; and any subordinate or collateral deed shall be charged with the duty to which it may be liable under any other description in this schedule.

MEMORIAL to be registered pursuant to any act of Parliament, made or to be made for the public registering of deeds and conveyances in England 0 10 0

And for every piece of vellum, parchment, or paper, upon which any such memorial shall be written, after the first, a farther *progressive* duty of 0 10 0

MEMORIAL to be registered or inrolled pursuant to act of Parliament, of any deed or instrument, deeds or instruments, whereby any annuity shall be granted or secured in England 1 0 0

And for every piece of vellum, parchment, or paper, upon which any such memorial shall be written, after the first, a further *progressive* duty of . . . 1 0 0

MORTGAGE, conditional surrender by way of mortgage, further charge, wadset and heritable bond, disposition, assignation, or tack, in security; and eik to a reversion; of or affecting any lands, estate or property, real or personal, heritable or moveable whatsoever;

Also any deed containing an obligation to invest any person in an annual rent, or in lands or other heritable subjects, in Scotland, under a clause of reversion, but without any personal bond or obligation therein contained, for payment of the money or stock intended to be secured.

Also any conveyance of any lands, estate, or property whatsoever, in trust, to be sold or otherwise converted into money, which shall be intended only as a security, and shall be redeemable before the sale or other disposal thereof, either by express stipulation or otherwise; except where such conveyance shall be made for the benefit of creditors generally, or for the benefit of creditors specified, who shall accept the provision made for payment of their debts in full satisfaction thereof, or who shall exceed five in number:

Also any defeazance, letter of reversion, back bond, declaration, or other deed or writing for defeating or making redeemable, or explaining or qualifying any conveyance, disposition, assignation or tack, of any lands, estate or property whatsoever, which shall be apparently absolute, but intended only as a security;

Also any agreement, contract, or bond, accompanied with a deposit of title deeds for making a mortgage, wad-

set, or any such other security or conveyance as aforesaid, of any lands, estate, or property, comprised in such title deeds, or for pledging or charging the same as a security;

And also any deed, whereby a real burthen shall be declared or created on lands or heritable subjects in Scotland:

Where the same respectively shall be made, as a security for the payment of any definite and certain sum of money, advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable,

Not exceeding 50l.	1	0	0
Exceeding 50l. and not exceeding 100l.	1	10	0
Exceeding 100l. and not exceeding 200l.	2	0	0
Exceeding 200l. and not exceeding 300l.	3	0	0
Exceeding 300l. and not exceeding 500l.	4	0	0
Exceeding 500l. and not exceeding 1,000l.	5	0	0
Exceeding 1,000l. and not exceeding 2,000l.	6	0	0
Exceeding 2,000l. and not exceeding 3,000l.	7	0	0
Exceeding 3,000l. and not exceeding 4,000l.	8	0	0
Exceeding 4,000l. and not exceeding 5,000l.	9	0	0
Exceeding 5,000l. and not exceeding 10,000l.	12	0	0
Exceeding 10,000l. and not exceeding 15,000l.	15	0	0
Exceeding 15,000l. and not exceeding 20,000l.	20	0	0
Exceeding 20,000l.	25	0	0

And where the same respectively shall be made as a security for the repayment of money, to be thereafter lent, advanced, or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be; other than and except any sum or sums of money to be advanced for the insurance of any property comprised in such mortgage or security against damage by fire, or to be advanced for the insurance of any life or lives, pur-

quant to any agreement in any deed, whereby any annuity shall be granted or secured for such life or lives;

If the total amount of the money secured, or to be ultimately recoverable thereupon, shall be uncertain and without any limit. 25 0 0

But if the total amount of the money secured, or to be ultimately recoverable thereon, shall be limited not to exceed a given sum. *{The same duty as on a mortgage or wadset for such limited sum.}*

And where the same respectively shall be made, as a security for the transfer or retransfer of any share, in any of the government or parliamentary stocks or funds, or in the stock and funds of the Governor and Company of the Bank of England, or of the East India Company, or of the South Sea Company, in consideration of stock or money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable. *{The same duty as on a mortgage or wadset for a sum of money, equal to the value of the stock or fund secured, according to the average price thereof on the day of the date of the mortgage or other instrument aforesaid, or on either of the ten days preceding.}*

And where the same respectively shall be made, as a security for the payment of a sum of money, and also for the transfer or retransfer of a share in any of the said stocks or funds, the said *ad valorem* duty shall be charged in respect of each.

And in case the same respectively shall be made, as a security for the payment or transfer, to different persons, of separate and distinct sums of money, or shares in any of the said stocks or funds; the said *ad valorem* duty shall be charged for and in respect of each separate and distinct sum of money, or share in any of the said stocks

or funds therein specified and secured, and not upon the aggregate amount thereof.

And where any such mortgage or wadset, or other instrument hereby charged with the same duty as a mortgage or wadset, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,100 words or upwards, then for every entire quantity of 1,000 words contained therein, over and above the first 1,000 words, a further progressive duty of 1 0 0

MORTGAGE, &c.—Any transfer or assignment, disposition or assignation, of any mortgage or wadset, or of any such other security as aforesaid, or of the benefit thereof, and of the money or stock thereby secured, in all cases where the person entitled to the right of redemption or reversion shall not be made a party to such transfer or assignment, disposition or assignation; and also where the person who originally made the mortgage, wadset or other security, shall continue entitled to the right of redemption or reversion, and shall be made a party to such transfer or assignment, disposition or assignation; provided no further sum of money or stock be added to the principal money or stock already secured 1 15 0

And in all other cases such transfer or assignment, disposition or assignation, shall be charged with the same duty or duties as an original mortgage, wadset or other security.

And where any such transfer or assignment, disposition or assignation, hereby charged with a duty of 17. 15s. together with any schedule, receipt, or other matter put or indorsed thereon, or annexed thereto, shall contain 2,100 words or upwards, then for every entire quantity

of 1,000 words contained therein, over and above the first 1,000 words, a further and *progressive* duty of 1 s. 6 d.

Provided always, that where several distinct deeds or instruments, falling within the description of any of the instruments hereby charged with the said *ad valorem* duty on mortgages and wadsets, shall be made at the same time, for securing the payment or transfer of one and the same sum of money; or one and the same share of any of the stocks or funds before mentioned; the said *ad valorem* duty, if exceeding 2l. shall be charged only on one of such deeds or instruments; and all the rest shall be charged with the duty to which the same may be liable, under any more general description of such deeds or instruments contained in this schedule; and if required for the sake of evidence, all the rest of such deeds or instruments shall be also stamped with some particular stamp, for denoting or testifying the payment of the said *ad valorem* duty, on all the said deeds or instruments being produced duly stamped with the duties hereby charged thereon.

And where any copyhold or customary lands or hereditaments shall be mortgaged, by means of a conditional surrender or grant; the said *ad valorem* duty shall be charged on the surrender or grant, or the memorandum thereof, if made out of court; or on the copy of court roll of the surrender or grant, if made in court. And copies of court roll, made after the 31st day of August, 1815, of surrenders and grants made in court before or upon that day, and subsequent to the 10th day of October, 1808, shall be charged with the said *ad valorem* duties. But copies of court roll, of surrenders, and grants made before or upon the 10th day of October, 1808, shall not be liable thereto.

And where any copyhold or customary lands or here-

disbursements shall be mortgaged or charged, together with other property, for securing one and the same sum of money, or one and the same share of any of the stocks or funds before mentioned; the said *ad valorem* duty shall be charged on the deed or instrument relating to the other property.

And where there shall be duplicates of any deed or instrument, chargeable with the said *ad valorem* duty on mortgages and wadsets, exceeding 2l. one of them only shall be charged therewith, and the other or others shall be charged with the duty to which the same may be liable, under any more general description in this schedule; and on the whole being produced duly stamped as hereby required, the latter shall also be stamped with a particular stamp for denoting or testifying the payment of the said *ad valorem* duty.

Exemptions from the said ad valorem duty on mortgages, &c. but not from any other duty to which the same may be liable.

Any deed or other instrument made in pursuance of and conformable to any agreement, contract or bond, charged with, and which shall actually have paid the said *ad valorem* duty, or the *ad valorem* duty on mortgages granted by the act of the 48th year of his Majesty's reign before mentioned, [c. 149].

Any deed or other instrument, made for the further assurance only, of any estate or property, already mortgaged, pledged or charged as a security, by any deed or instrument, which shall have paid the said *ad valorem* duty hereby charged, or the *ad valorem* duty on mortgages or heritable bonds, imposed by the act of the 44th

or the act of the 48th year of his Majesty's reign before mentioned.

Any deed or other instrument, made as an additional or further security for any sum or sums of money, or any share or shares of any of the stocks or funds before mentioned, already secured by any deed or instrument, which shall have paid the said *ad valorem* duty hereby charged, or the *ad valorem* duty on mortgages or heritable bonds, charged by the said act of the 44th [c. 98.] or the said act of the 48th year of his Majesty's reign, to be exempt from the said *ad valorem* duty hereby charged, so far as regards such sum or sums of money, or such share or shares of any of the said stocks or funds, before secured, in case such additional or further security shall be made by the same person or persons who made the original security; but if any further sum of money or stock shall be added to the principal money or stock already secured, or shall be thereby secured to any other person, the said *ad valorem* duty shall be charged in respect of such further sum of money or stock.

And if necessary, for the sake of evidence, the deeds and instruments hereby exempted from the said *ad valorem* duty, shall be stamped with a particular stamp, for denoting or testifying the payment of the *ad valorem* duty, upon all the deeds and instruments relating to the particular transaction being produced, and appearing to be duly stamped with the duties to which they were liable.

For general exemptions from the preceding and all other stamp duties, see the end of this part of the schedule.

MORTGAGE, wadset, &c. with a conveyance of the equity or right of redemption or reversion, or other matter in the same deed; viz,

Where any deed or writing shall operate as a mortgage or other instrument hereby charged with the *ad valorem* duty on mortgages, and also as a conveyance of the equity or right of redemption or reversion of any lands, estate or property therein comprised, to, or in trust for, or according to the direction of a purchaser, such deed or writing shall be charged not only with the said *ad valorem* duty on mortgages, but also with the *ad valorem* duty hereinbefore charged on a conveyance upon the sale of any property; but where the equity or right of redemption or reversion shall be thereby conveyed, or limited in any other manner, such deed or writing shall be charged only as a mortgage;

And in all other cases where a mortgage or other instrument, hereby charged with the *ad valorem* duty on mortgages, shall be contained in one and the same deed or writing with any other matter or thing (*except what shall be incident to such mortgage or other instrument,*) such deed or writing shall be charged with the same duties (*except the progressive duty*), as such mortgage or other instrument and such other matter or thing would have been separately charged with, if contained in separate deeds or writings.

And where any such deed or writing, as is mentioned in the two preceding clauses, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further progressive duty of

1 0 0

PARTITION.—Any deed whereby any lands or other hereditaments, or heritable subjects, in England or Scotland, shall be conveyed, or any copyhold or customary lands or hereditaments, in England, shall be covenanted to be surrendered, in order to effect a partition or division thereof, among coparceners, joint tenants, or tenants in common, heirs, portioners, conjux fiars, or joint proprietors of any sort;

If no sum of money or only a sum under 300l. shall be paid, or agreed to be paid, for equality of partition or division; the ordinary duty of 1 15 0

And if any sum or sums of money, amounting to 300l. or upwards, shall be paid, or agreed to be paid, for equality

The same as valorem duty as for a conveyance on the sale of lands for a sum of money equal to the amount of the sum or sums so paid, or agreed to be paid.

And where any such deed of partition or division, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a farther *progressive* duty of,

If the deed is liable, in the first instance, to a duty of 1s. 15s. 1 5 0

Or if liable to a higher duty in the first instance, 1 5 0

And any duplicate of any such deed of partition or division shall be charged with the same duty or duties.

And in case there shall be more than one deed, for completing the title to the estate or interest conveyed by either party, the principal deed only shall be charged under this head of partition; and any subordinate or

collateral deed shall be charged with the duty to which it may be liable, under any other description in this schedule,

53 GEO. III. c. 141.

An Act to repeal an act of the 17th year of the reign of his present Majesty, intituled, 'An Act for registering the grants of life annuities, and for the better protection of infants against such grants; and to substitute other provisions in lieu thereof.'

[S. 1. Repeals the act of 17 Geo. 3. except as to annuities granted before the passing of the present act.]

S. 2. "And be it further enacted, that within thirty days after the execution of every deed, bond, instrument or other assurance, whereby any annuity or rent charge shall, from and after the passing of this act, be granted, for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, a memorial of the date of every such deed, bond, instrument or other assurance, of the names of all the parties and of all the witnesses thereto, and of the person or persons for whose life or lives such annuity or rent charge shall be granted, and of the person or persons by whom the same is to be beneficially received, the pecuniary consideration or considerations for granting the same, and the annual sum or sums to be paid, shall be enrolled in the high Court of Chancery, in the form or to the effect following, with such alterations therein as the nature and circumstance of any particular case may reasonably require:—

Date of instrument.	Nature of instrument.	Names of parties.	Names of witnesses.	Name or names of person or persons by whom annuity or rent charge to be beneficially received.	Person or persons for whose life or lives the annuity or rent charge is granted.	Consideration, and how paid.	Amount of annuity or rent charge.
10 Aug. 1813.	Indentures of lease and release.	A. B. of one part, C. D. of the other part.	E. F. G. H. of	C. D.	A. B.	100l. paid in money, 500l. paid in notes of the governor and company of the bank of England, or other notes or bills of exchange, as the case may be.	100l. a year.
Same date.	Bond in penalty of 1200l.	A. B. to C. D.	E. F. G. H.	For securing the same annuity or rent charge.			
Same date.	Warrant of attorney to confess judgment on the same bond.	A. B. and L. M. attorneys of Court of King's Bench.	E. F. G. H.				

otherwise every such deed, bond, instrument or other assurance, shall be null and void, to all intents and purposes."

S. 3. "Provided always, and be it further enacted, that if any such annuity shall be granted by, or to, or for the benefit of any company exceeding in number ten persons, which company shall be formed for the purpose of granting or purchasing annuities, it shall be sufficient in any such memorial to describe such company by the usual firm or name of trade."

S. 4 "And be it further enacted, that in every deed, bond, instrument or other assurance, whereby any annuity or rent charge shall, from and after the passing of

this act, be granted or attempted to be granted, for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, where the person or persons to whom such annuity shall be granted or secured to be paid, shall not be intitled thereto beneficially, the name or names of the person or persons who is or are intended to take the annuity beneficially, shall be described in such or the like manner as is hereinbefore required in the intolment; otherwise every such deed, instrument or other assurance, shall be null and void."

S. 6. " And be it further enacted, that if any part of the consideration for the purchase of any such annuity or rent charge shall be returned to the person advancing the same, or in case such consideration, or any part of it shall be paid in notes, if any of the notes, with the priority and consent of the person advancing the same, shall not be paid when due, or shall be cancelled or destroyed without being first paid; or if such consideration is expressed to be paid in money, but the same or any part of it shall be paid in goods; or if the consideration or any part of it shall be retained on pretence of answering the future payments of the annuity or rent charge; or any other pretence; in all and every the aforesaid cases, it shall be lawful for the person by whom the annuity or rent charge is made payable, or whose property is liable to be charged or affected thereby, to apply to the court in which any action shall be brought for payment of the annuity or rent charge, or judgment entered by motion, to stay proceedings on the action or judgment; and if it shall appear to the court that such practices as aforesaid, or any of them, have been used, it shall and may be lawful for the court to order every deed, bond, instrument or other assurance, whereby the annuity or rent

charge is secured, to be cancelled, and the judgment, if any has been entered, to be vacated."

[S. 8. Declares all contracts for the purchase of any annuity or rent charge with any person under the age of twenty-one years, to be utterly void, notwithstanding any attempt to confirm the same after such person attains twenty-one; and makes it a misdemeanor to prevail on an infant to grant or bind himself, when of age, to grant an annuity or rent charge, or to forego the plea of infancy, or to ratify the annuity when of age.]

S. 10. "And be it further enacted, that this act shall not extend to Scotland or Ireland, nor to any annuity or rent charge given by will or marriage settlement, or for the advancement of a child, nor to any annuity or rent charge secured upon freehold or *copyhold* or *customary* lands in Great Britain or Ireland, or in any of his Majesty's possessions beyond the seas, of equal or greater annual value than the said annuity, over and above any other annuity, and the interest of any principal sum charged or secured thereon, of which the grantee had notice at the time of the grant, whereof the grantor is seised in fee simple or fee tail in possession, or the fee simple whereof in possession the grantor is enabled to charge at the time of the grant, or secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said annuity; nor to any *voluntary* annuity or rent charge granted without regard to pecuniary consideration of money's worth; nor to any annuity or rent charge granted by any body corporate, or under any authority or trust created by act of Parliament."

55 GEO. III. c. 192.

An Act to remove certain difficulties in the disposition of copyhold estates by will."

"Whereas by the customs of certain manors, copyhold estates of such manors pass by the last will and testament of the copyhold tenants thereof, declaring the uses of surrenders made for that purpose: And whereas much inconvenience has arisen, from the necessity of making such surrenders: For remedy whereof, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that in all cases where by the custom of any manor in England or Ireland any *copyhold tenant* (163) of such manor may by his or her last will and testament dispose of or appoint his or her copyhold tenements, the same having been surrendered to such uses as should be declared by such

(163) A question naturally arises whether a customary heir, before admittance, is to be considered a *copyhold tenant* within the meaning of this legislative provision. The better opinion would seem to be, that the act does supply the surrender for an unadmitted customary heir, who, it is to be recollected, is a complete tenant before admittance, against all persons, except the lord in respect of his fine, (*ante*,

pt. 1. pa. 346); and the lord would not be prevented by such a disposition from proclaiming against the customary heir, and seizing *quibusque*, if the heir or his devise suffered three proclamations to be made without claiming to be admitted. But I apprehend the lord would be entitled to two fines, on the admission of the devise of an unadmitted customary heir.

last will and testament, every disposition or charge made or to be made by any such last will and testament, by any person who shall die after the passing of this act, of any such copyhold tenements, or of any right, title, or interest in or to the same, shall be as valid and effectual to all intents and purposes, although no surrender shall have been made to the use of the last will and testament of such person, as the same would have been if a surrender had been made to the use of such will" (164).

S. 2. "Provided also, and it is hereby further enacted, that no person entitled, or claiming to be entitled, to copyhold lands, tenements, or hereditaments, in consequence of any testamentary disposition, shall be entitled to be admitted to the same by virtue of any thing in this act contained, except upon payment of all such stamp duties (165), fees, and sums of money as would have been lawfully due and payable in respect of the surrendering of such copyhold lands, tenements, or hereditaments, to the use of such will, or in respect of the presenting, registering or inrolling such surrender, had the same lands, tenements and hereditaments been surrendered to the use of the will of the person so disposing of the same; all such stamp duties, fees, or sums of money due as aforesaid, to be paid in addition to the stamp

(164) It has been doubted whether, since the passing of this act, a general devise of all the testator's real estates, will pass unsurrendered copyholds, where the testator has freehold lands to which the devise might be applied. I cannot, however, see how the act can be supposed to have made any alteration in this respect, but apprehend that in

the absence of that evidence of intention, which a surrender to will has been held to furnish (*ante*, pt. 1. pa. 309), a devise in the above general terms, would not be held to pass copyholds, unless the testator had no other real property.

(165) *Ante*, pt. 1. pa. 208, n. 250.

duties, fees or sums of money due or payable on the admission of such person so entitled or claiming to be entitled to the same copyhold lands, tenements, or hereditaments, and the stamp duties to be affixed to the copy of the admission."

S. 3. "Provided always, and it is hereby enacted and declared, that nothing in this act contained shall be construed, deemed, or taken, at law or in equity, to render invalid or ineffectual any devise or disposition of any copyhold lands, tenements, or hereditaments, or of any right, title, or interest in or to copyhold lands, tenements or hereditaments, which would be valid or effectual if this act had not been made; or to render valid and effectual any devise or disposition of any copyhold lands, tenements, or hereditaments, or of any right, title or interest in or to any copyhold lands, tenements or hereditaments, which would be invalid or ineffectual if a surrender had been made to the use of the last will and testament of the person attempting to dispose of the same by will; any thing hereinbefore contained to the contrary notwithstanding."

55 GEO. III. c. 147.

"An Act for enabling spiritual persons to exchange the Parsonage or Glebe Houses or Glebe Lands, belonging to their Benefices, for others of greater value, or more conveniently situated for their residence and occupation; and for annexing such houses and lands, so taken in exchange, to such benefices as parsonage or glebe houses and glebe lands, and for purchasing and annexing lands to become glebe in certain cases, and for other purposes."

"Whereas in divers ecclesiastical benefices, perpetual

curacies and parochial chapelries, the glebe lands, or some part or parts thereof, lie at a distance from and are inconvenient to be occupied with the parsonage or glebe houses; and the parsonage or glebe houses of divers benefices, perpetual curacies and parochial chapelries, are mean and inconvenient; and it would often tend much to the comfort and accommodation, and thereby also to promote the residence of the incumbents of such benefices, perpetual curacies and parochial chapelries, if the glebe lands and parsonage or glebe houses thereof could be by law exchanged for other lands of greater value, or more conveniently situated, and for other and more convenient houses: And whereas there are also divers lands and tenements which have been accustomed to be granted or demised by the incumbent for the time being of certain ecclesiastical benefices, perpetual curacies or parochial chapelries, for one, two or three lives, or for a term or terms of years absolutely or determinable on a life or lives, *as being holden by copy of court roll or otherwise, under some manor or lordship belonging to such benefices, perpetual curacies or parochial chapelries*, and it would therefore be advantageous to the said benefices if the same lands and tenements, or some of them, or some part thereof, were annexed as glebe to the living or benefice to which they belong; May it therefore please," &c. "that from and after the passing of this act, it shall be lawful for the parson, vicar, or other incumbent for the time being, of any ecclesiastical benefice, perpetual curacy or parochial chapelry, by deed indented, and to be registered in manner hereinafter mentioned, and with the consent of the patron of such benefice, perpetual curacy or parochial chapelry, and of the bishop of the diocese wherein the same is locally situate (to be signified as hereinafter,

is mentioned), to grant and convey to any person or persons, and to his, her or their heirs and assigns, or otherwise, as he or they shall direct or appoint, or to any corporation, sole or aggregate, and his or their successors, the parsonage or glebe house, and the outbuildings, yards, gardens and appurtenances thereof, and the glebe lands, and any pastures, feedings or rights of common or way appendant, appurtenant or in gross, or any or either of such house, outbuildings, yards, gardens and glebe lands, pastures, feedings, or rights of common or way, or any part or parts thereof, belonging to any such benefice, perpetual curacy, or parochial chapelry, in lieu of and in exchange for any house, outbuildings, yards, gardens and appurtenances, and any lands, or any or either of them, whether lying within the local limits of such benefice, perpetual curacy or parochial chapelry or not, but so as that the same be situate conveniently for actual residence or occupation by the incumbent thereof, the same also being of greater value, or more conveniently situated than the premises so to be given in exchange, and being of freehold tenure, *or being copyhold of inheritance, or for life or lives, holden of any manor belonging to the same benefice*, and also for the parson, vicar, or incumbent for the time being, of the same benefice, perpetual curacy or parochial chapelry, by the same or a like deed, and with the like consent, and testified as aforesaid, to accept and take in exchange to him and his successors for ever, from any person or persons, or corporation sole or aggregate, any other house, outbuildings, yards, gardens, easements and appurtenances, and any other lands, or any or either of such house, outbuildings, yards, gardens, lands, easements and appurtenances, the same respectively being of freehold tenure, *or being copyhold of inheritance, or*

*for life or lives, holden of any manor belonging to the same benefice, and being of greater value or more conveniently situated, in lieu of and in exchange for such parsonage or glebe house, outbuildings, yards, gardens, glebe lands and appurtenances, and such pastures, feedings and rights of common or way, or any or either of them, so to be granted and conveyed, and which said house, outbuildings, yards, gardens, lands and appurtenances so to be accepted and taken in exchange, by any parson, vicar, or other incumbent, shall for ever, from and after such grant and conveyance thereof, be the parsonage and glebe house, and glebe lands and premises of the said benefice, perpetual curacy or parochial chapelry, to all intents and purposes whatsoever, and shall become annexed to the said benefice, perpetual curacy or parochial chapelry, to all intents and purposes whatsoever, and be holden and enjoyed by such incumbent and his successors accordingly, without any license or writ of *ad quod damnum*; and that the whole, or any part or parts of the said house, outbuildings, lands, and premises so to be annexed, which before such annexation were of copyhold tenure, shall for ever, from and after such annexation, become and be of freehold tenure, the statute of mortmain, or any other statute or law to the contrary notwithstanding: Provided always, that nothing in this act contained shall extend, or be construed to authorise the granting or conveying in exchange by any parson, vicar or other incumbent, either at one and the same time, and by one and the same incumbent, or at different times, and by several incumbents, and in several portions, any greater quantity in the whole than thirty statute acres of the glebe lands of any benefice, perpetual curacy or parochial chapelry: Provided also, that in all cases when such exchange*

shall be made by any owner or owners having any less estate or interest than in fee simple of or in the messuage, buildings, lands and premises so to be by him, her or them granted or conveyed in exchange, or being any corporation aggregate or sole, or person or persons under any legal disability, the parsonage house, outbuildings, and glebe lands respectively, to be so taken in exchange as aforesaid, shall at the time of making such exchange be of equal value with, or not of less value than the said messuage, buildings, lands and premises respectively, so to be granted and conveyed in exchange to such parson, vicar, or other incumbent."

S. 4. " And be it further enacted, that from and after the passing of this act, it shall and may be lawful to and for the parson, vicar, or other incumbent of any ecclesiastical benefice, perpetual curacy or parochial chapelry, of or to which benefice, perpetual curacy or parochial chapelry, any manor or lordship is parcel or appurtenant, and as parcel of or belonging to which manor or lordship any lands or tenements are or have been usually granted or demised, or grantable or demisable *by copy of court roll*, or otherwise, for any life or lives, or for any term or number of years absolutely, or determinable on any life or lives, by deed indented (and to be registered as hereinafter mentioned) with the consent of the patron and bishop (to be testified as hereinafter mentioned) to annex to the said benefice, perpetual curacy or parochial chapelry, as and for glebe land, or parsonage or glebe house or houses and buildings thereof, all or any part or parts of such lands or tenements, whethet lying within the local limits of such benefice, perpetual curacy or parochial chapelry, or not, and that from and after such annexation, the said lands and tenements so annexed, shall cease to be thereafter grantable or de-

misable by any incumbent of the said benefice, perpetual curacy or parochial chapelry (otherwise than as glebe lands are or shall be by law grantable or demisable), but shall from thenceforth be and become, and be deemed and taken to be the glebe lands and parsonage or glebe house or houses of and annexed to such benefice, perpetual curacy or parochial chapelry, for ever, to all intents and purposes whatsoever, without any license or writ of *ad quod damnum*; the statute of mortmain, or any other statute or law to the contrary notwithstanding: Provided always, that no such annexation shall in any wise annul, determine, or affect any grant or demise then previously made and actually existing of the said lands and tenements so to be annexed as last aforesaid."

S. 6. "And whereas an act was passed in the seventeenth year of the reign of his present Majesty, intituled, an act to promote the residence of the parochial clergy, by making provision for the more speedy and effectual building, rebuilding, repairing, or purchasing houses, and other necessary buildings and tenements, for the use of their benefices: And whereas one other act was passed in the twenty-first year of the reign of his present Majesty, intituled, an act to explain and amend an act made in the seventeenth year of the reign of his present Majesty, intituled, an act to promote the residence of the parochial clergy, by making provision for the more speedy and effectual building, rebuilding, repairing, or purchasing houses, and other necessary buildings and tenements, for the use of their benefices: And whereas there are many ecclesiastical benefices, perpetual curacies and parochial chapelries, to which no glebe land, or only a small portion of glebe land is belonging; and it is therefore expedient to enable the making provision

by purchase, for the annexation of glebe land to such benefices, perpetual curacies and parochial chapelries; Be it therefore further enacted, that, from and after the passing of this act, it shall be lawful for the parson, vicar, or other incumbent for the time being, of any ecclesiastical benefice, perpetual curacy or parochial chapelry, the existing glebe whereof shall not exceed five statute acres, with the consent of the patron and bishop, to be signified as hereinafter mentioned, to purchase any lands not exceeding in the whole twenty statute acres, with the necessary outbuildings thereon, whether being within the local limits of the said benefice, perpetual curacy or parochial chapelry, or not, but so as that the same be situate conveniently for building a parsonage or a glebe house, and outbuildings, and for gardens and glebe thereof, or for any of the said purposes, and for actual residence and occupation by the incumbent thereof, such land being of freehold tenure, *or being copyhold of inheritance, or for life or lives, holden of any manor or lordship belonging to the same benefice, perpetual curacy or parochial chapelry*; and which lands so purchased shall for ever, from and after the grant and conveyance thereof, be and become annexed to and glebe of such benefice, perpetual curacy or parochial chapelry, to all intents and purposes whatsoever, and be holden and enjoyed by such incumbent, and his successors accordingly, without any license or writ of *ad quod damnum*; and *the whole or any part or parts of the said lands, which before such annexation, were or was of copyhold tenure, shall for ever, from and after such annexation, become and be of freehold tenure*; the statute of mortmain or any other statute or law to the contrary notwithstanding."

[S. 7. Authorises such parson, vicar, or other incum-

bent, with the consent of the patron and bishop, to borrow (beyond the monies authorised to be borrowed by the said act of the 17th Geo. 3.) such sum as should be certified as therein mentioned to be the value of the said lands at the time of the purchase thereof, not exceeding two years' clear income and produce of such benefice, &c., after deducting all taxes and other outgoings (except the salary to the assistant curate, if any); and to mortgage the tithes and other profits of such benefice, &c. in the manner therein prescribed, for securing the repayment of the money so to be borrowed, with interest.]

[S. 12. Empowers owners, whether corporations sole or aggregate, tenants in fee simple, fee tail or for life, &c. to convey in lieu and in exchange for any parsonage house, &c., or to sell and convey to such parson, &c., any lands not exceeding twenty statute acres, with the necessary outbuildings thereon, for such sum as should be certified as thereafter mentioned to be the value thereof, and directs the payment into the bank of the purchase monies for estates sold by any corporation, infants or other incapacitated persons.]

[S. 13. Restrains corporations, tenants in tail, &c. from selling or conveying (except by way of exchange) any lands or grounds exceeding five statute acres.]

[S. 14, 15, and 16. Require a certain notice to be given of the intention to make such exchanges or purchases; and plans and valuations to be made of the lands, &c. purchased, or agreed to be given and taken in exchange, to enable the bishop to judge of the expediency of such sales or exchanges; and also that a commission of inquiry be issued by the bishop, on receiving such plans, to not less than six persons, three to be beneficed clergymen, resident in the neighbourhood of

the lands, &c. exchanged or purchased, and one a barrister of at least three years standing, to be named by the senior judge in the last preceding commission of *Nisi Prius* for the particular county, &c.]

56 GEO. III. c. 52.

“An Act to amend and render more effectual an act passed in the last session of Parliament for enabling Spiritual Persons to exchange their Parsonage Houses or glebe lands, and for other purposes therein mentioned.”

“Whereas an act was passed in the last session of Parliament, intituled, an act,” &c. [sets forth the title of the last mentioned act]. “And whereas it is expedient to authorize the incumbents of benefices, perpetual curacies and parochial chapelries to apply the monies arising from the sale of any timber cut from the glebe or other lands of their respective benefices, perpetual curacies or parochial chapelries, towards the purposes of the said recited act: May it therefore please your Majesty that it may be enacted; and be it enacted,” &c. “that it shall and may be lawful for the incumbent of any benefice, perpetual curacy or parochial chapelry, with the consent of the patron of such benefice, perpetual curacy or parochial chapelry, and of the bishop of the diocese wherein the same is locally situate, or of the archbishop or bishop to whom the peculiars, wherein such benefice, perpetual curacy or parochial chapelry is situate, shall belong, (such consent to be signified in manner as in the said recited act is mentioned,) to pay and apply the monies to arise by sale of any timber cut and sold from the glebe lands of such benefice, perpetual curacy or parochial chapelry, or from any other land, *whether copyhold*.”

holden under any manor of such benefice, perpetual curacy, or parochial chapelry, or otherwise, the timber whereof belongs to such benefice, perpetual curacy or parochial chapelry, either for equality of exchange, or towards and in part of equality of exchange, or for the price or purchase money, or towards and in part of the price or purchase money of any house, outbuildings, yards, gardens and appurtenances, or any lands, or any or either of them, by the said recited ~~act~~ authorised to be taken in exchange or to be purchased, and from and after such exchange or purchase to be annexed to, and to be and become the parsonage and glebe house and glebe lands and premises of such benefice, perpetual curacy or parochial chapelry, as in the said recited act is mentioned."

S. 2. " And whereas it is by the said recited act enacted, that the bishop shall, in cases of exchange and purchase under the said act, issue a commission of enquiry for the purposes therein mentioned, to be directed to such persons as are therein described, and of whom one shall be a barrister of three years standing at the least, to be named by the senior judge of *Nisi Prius* for the county in which the benefice, perpetual curacy or parochial chapelry, whereto it shall be proposed to annex any buildings or land by exchange or purchase under the said act, shall be situate; but inasmuch as the nomination of such barrister by a judge of *Nisi Prius* is not applicable to the county palatine of Chester, nor to the principality of Wales; Be it therefore enacted, that where any exchange or purchase shall be made or be proposed to be made under the authority of the said act in any benefice, perpetual curacy or parochial chapelry, situate within the said county palatine of Chester, or within the said principality of Wales, such barrister shall be named

by the chief justice for the time being of the said county palatine of Chester, or by the justice, or, in case of his absence, the other justice of the great sessions for those counties within the said principality of Wales, within which said county palatine or respective counties of the said principality of Wales the said benefice, perpetual curacy or parochial chapelry, shall be situate."

1 GEO. IV. c. 119.

"An Act for the relief of Insolvent Debtors in England; to continue in force until the first day of June, one thousand eight hundred and twenty-five."

[26th July, 1820.]

S. 4. "Provided always, and be it further enacted, that when and as soon as the said court shall be fully constituted and established, it shall be lawful for any person in that part of the united kingdom called England, who shall be in actual custody upon any process whatsoever, for or by reason of any debt, damage, costs, sum or sums of money, or for or by reason of any contempt of any court whatsoever for non-payment of any sum or sums of money, or of costs taxed or untaxed, either ordered to be paid or to the payment of which such persons would be liable in purging such contempt; or in any manner in consequence of or by reason of such contempt, at any time within the space of fourteen days next after such court shall have been so fully constituted and established, or within the space of fourteen days next after the commencement of such actual custody, or within such further time as the said court shall think reasonable, to apply by petition in a summary way to the court to be established by virtue of this act, for his or her discharge from such confinement, according to the

provisions of this act; and in such petition shall be stated the place wherein such prisoner shall be then confined, the time when such prisoner was first charged in custody, together with the name or names of the person or persons at whose suit or prosecution he or she shall, at the time of presenting such petition, be detained in custody, and the amount of the debts and sums of money, and also of such costs as aforesaid, so far as the amount of such costs is ascertained, for which such prisoner shall be so detained; and shall pray to be discharged from custody, and to have future liberty of his or her person against the demands for which such prisoner shall be then in custody, and against the demands of all other persons who shall be, or claim to be creditors of such prisoner at the time of presenting such petition; which petition shall be subscribed by the said prisoner, and shall forthwith be filed in the said court; and such prisoner shall at the time of subscribing such petition duly execute a conveyance and assignment, in such manner and form as the said court shall direct, of all the estate, right, title, interest and trust of such prisoner to all the real and personal estate and effects of every such prisoner, except to the wearing apparel, bedding, and other such necessities of such prisoner and his or her family, not exceeding in the whole the value of twenty pounds, so as to vest all such real and personal estate and effects in the provisional assignee of the said court, subject to a proviso that in case such prisoner shall not obtain his discharge by virtue of this act, such conveyance and assignment shall, from and after the dismissal of the petition of such prisoner praying for his discharge, be null and void to all intents and purposes."

S.5. "Provided always, and be it further enacted, that the said court shall and may order and direct such

provisional assignee, or such assignee or assignees as are hereinafter mentioned, to pay out of the said estate and effects before mentioned to the said prisoner such allowance for his or her support and maintenance during such prisoner's confinement in actual custody, as to the said court shall seem reasonable and fit."

S. 6. " Provided always, and be it further enacted, that such prisoner shall, within the space of fourteen days next after such petition shall have been filed, or within such further time as the said court shall think reasonable, deliver into the said court a schedule, containing a full and true description of all and every person and persons to whom such prisoner shall be then indebted, or who, to his or her knowledge or belief, shall claim to be his or her creditors, together with the nature and amount of such debts and claims respectively, distinguishing such as shall be admitted from such as shall be disputed by such prisoner, and also a full, true, and perfect account of *all the estates and effects, real and personal*, in possession, reversion, remainder or expectancy; and also of all places of benefit or advantage, whether the emoluments of the same arise from fixed salaries or from fees; and also of all pensions or allowances of the said prisoner in possession or reversion, or held by any other person or persons for or on behalf of the said prisoner, or of and from which the said prisoner derives or may derive any manner of benefit or advantage; and also all rights and powers of every nature and kind whatsoever, which such prisoner, or any other person or persons in trust for such prisoner, or for his or her use, benefit or advantage in any manner whatsoever, shall be seised or possessed of, or interested in, or intitled unto, or which such prisoner, or any person or persons in trust for him or her, or for his or her benefit, shall have any

power to dispose of, charge or exercise for the benefit or advantage of such prisoner at the time of presenting such petition; together with a full, true and perfect account of all debts at such time owing to such prisoner, or to any person or persons in trust for him or her, or for his or her benefit or advantage, either solely, or jointly with any other person or persons; and the names and places of abode of the several persons from whom such debts shall be due or owing, and of the witnesses who can prove such debts, so far as such prisoner can set forth the same; and such schedule shall also fully and truly describe the wearing apparel and bedding of such prisoner, and his or her family, and the working tools and implements, and other such necessities, not exceeding in the whole the sum of twenty pounds, which may be excepted by such prisoner from the operation of this act, together with the values of such excepted articles respectively; and the said schedule shall be subscribed by such prisoner, and shall forthwith be filed in the said court."

S. 7. "And be it further enacted, that when the said court shall adjudge any prisoner to be entitled to his discharge, such court shall appoint a proper person or proper persons to be assignee or assignees of the estate and effects of such prisoner for the purposes of this act; and when such assignee or assignees shall have signified to the said court their acceptance of the said appointment, every such prisoner's estate, effects, rights, and powers, vested in such provisional assignee as aforesaid, shall immediately be *assigned* by such provisional assignee to such assignee or assignees, in trust for the benefit of such assignee or assignees, and the rest of the creditors of every such prisoner, in respect of or in proportion to their respective debts, according to the provisions of this

act; and in case any prisoner, who shall be discharged by virtue of this act, shall be entitled to any *copyhold or customary estate*, the assignment to such assignee or assignees as aforesaid shall be entered on the court rolls of the manor of which such copyhold or customary estate shall be holden; and thereupon it shall be lawful for the assignee or assignees of the estate and effects of such prisoner, to *surrender or convey* such *copyhold or customary estate* to any purchaser or purchasers of any such copyhold or customary estate from such assignee or assignees, as the said court shall direct, and the rents and profits thereof shall be in the mean time received by such assignee or assignees, for the benefit of the creditors of such prisoner, without prejudice nevertheless to the lord or lords of the manor of which any such copyhold or customary estate shall be holden; and such assignee or assignees is and are hereby fully empowered to sue from time to time as there may be occasion, in his, her, or their own name or names, for the recovery, obtaining, and enforcing any estate, effects, or rights of any such prisoner; and also to execute any trust or power vested in or created for the use or benefit of any such prisoner, but in trust for the benefit of such assignee or assignees, and the rest of the creditors of every such prisoner, according to the provisions of this act, and to give such discharge and discharges to any person or persons who shall respectively be indebted to such prisoner, as may be requisite; and every such assignment as aforesaid, whether to a *provisional or other assignee or assignees*, shall be entered on the proceedings of the said court, and an office copy of every such assignment shall be sufficient evidence thereof in all courts, and to all intents and purposes; and every such assignee or assignees shall, with all convenient speed, after his, her,

or their accepting such assignment as aforesaid, use his, or her, or their best endeavours to receive and get in the estate and effects of every such prisoner, and shall, with all convenient speed, make sale of all the *estate and effects* of such prisoner vested in such assignee or assignees; and if such prisoner shall be interested in or entitled to any real estate, either in possession, reversion, or expectancy, the same, within the space of two months after such assignment and conveyance, or within such other time as the said court shall direct, shall be sold by public auction, in such manner, and at such place or places, as the major part of the creditors of such prisoner entitled to the benefit thereof, who shall assemble together on any notice in writing published in the London Gazette, and in some daily paper printed and published in London, or within the bills of mortality, if the prisoner before his or her going to prison resided in London, or within the bills of mortality, and if such prisoner resided elsewhere, then in some printed newspaper which shall be published and generally circulated in or near the county, riding, division, city, town, liberty, or place in which such prisoner resided before he or she was committed to prison, thirty days before any such sale shall be made, shall, under his, her, or their hand or hands, approve; and every such assignee or assignees, at the end of three months at the farthest from the time of his, her, or their accepting any such assignment or conveyance as aforesaid, and so from time to time as occasion shall require, shall make up an account of such prisoner's estate, and make oath in writing, before an officer of the said court to be appointed for that purpose, or before one or more justice or justices of the peace, of the said county, riding, division, city, town, liberty, or place in which such assignee or assignees

shall reside, that such account contains a fair and just account of the estate and effects of every such prisoner got in by or for such assignee or assignees, and of all payments made in respect thereof, and that all payments in every such account charged were truly and *bonâ fide* made and paid, which account so sworn shall be filed with the proper officer of the said court; and if it shall appear that such assignee or assignees has in his or their hands any balance wherewith a dividend may be made amongst the creditors of such prisoner, whose debts are expressed in the schedule delivered by such prisoner, such assignee or assignees shall forthwith declare the amount of the balance in his hands, wherewith such dividend may be made; and notice of the making of every such dividend shall be published, in like manner as a meeting of creditors is hereinbefore directed to be published, thirty days at least before such dividend shall be made; and every creditor, whose debts shall be stated admitted in the prisoner's schedule, shall be allowed to receive a share of such dividend, unless such prisoner, or his or her assignee or assignees, or any other creditor of such prisoner, shall object to any such debt, in which case the same shall be examined into by the said court, who shall have full power for that purpose to require and compel the production of all books, papers, and writings which may be necessary to be produced, as well by the person or persons claiming such debt, as by the prisoner against whom the same shall be claimed, or his or her assignee or assignees, and to examine all such persons and their witnesses on oath, as the nature of the case may require, and to take all other measures necessary for the due investigation of such claim; and the decision of the said court upon such claim shall be con-

clusive with respect to any dividend of the effects of such prisoner, under the provisions of this act."

S. 8. "And whereas prisoners discharged by virtue of this act may be entitled to annuities for their own lives, or other uncertain interests, or to reversionary or contingent interests, or to property under such circumstances that the immediate sale thereof, for payment of their debts, may be very prejudicial to them, and deprive them of the means of subsistence which they might otherwise have after payment of their debts; and it may be proper in some cases to authorise the raising of money by way of mortgage, for payment of the debts or part of the debts of a prisoner discharged by virtue of this act, and defraying the expenses attending the execution of this act, instead of selling the property of such prisoner for such purposes; Be it enacted, that in all such cases it shall be lawful for the said court to take into consideration all circumstances affecting the *property* of any prisoner who shall be discharged by virtue of this act; either at the time of the discharge of such prisoner, or at any subsequent time; and if it shall appear to the said court that it would be reasonable to make any special order touching the same, it shall be lawful for the said court so to do, and to direct that such property, as it may be expedient not to sell, or not to sell immediately, according to the provisions of this act, shall not be sold; and from time to time to order and direct in what manner such property shall be managed for the benefit of the creditors of such prisoner, until the same can be properly sold, or until payment of all such creditors, according to the provisions of this act, and to make such order touching the sale or disposition of such property as to the said court shall seem reasonable, considering the rights of the creditors of such prisoner to payment of their

demands, and the future benefit of such prisoner after payment of his or her debts, and upon such terms and conditions with respect to the allowance of interest on debts not bearing interest, or other circumstances, as to the said court shall seem just, and if it shall appear to the said court that the debts of such prisoner can be discharged by means of money, raised by way of mortgage on *any property* of such prisoner, instead of raising the same by sale, it shall be lawful for the said court so to order, and to give all necessary directions for such purpose, and generally to direct all things which may be proper for the discharge of the debts of such prisoner, in such manner as may be most consistent with the interests of such prisoner in any surplus of his or her effects after payment of such debts."

S. 12. "And whereas many persons who may claim the benefit, or be brought within the operation of this act, are seised and possessed of lands, tenements and hereditaments, to hold for the term of their natural lives, with power of granting leases and taking fines, reserving small rents on such estate, for one, two, or three lives, in possession, or reversion, or for some number of years, determinable upon lives, *or have powers over such REAL or personal estate which such prisoners could execute for their own advantage*, and which said powers ought to be executed for the benefit of the creditors of such prisoners; Be it therefore enacted, that in every such case all and every the powers of leasing such lands, tenements and hereditaments, *and all other such powers as aforesaid over such REAL or personal estates*, which are or shall be vested in any such prisoner as aforesaid, shall and are hereby invested in the assignee or assignees of the real and personal estate of such prisoner, by virtue of this act, so far as the prisoner could by law vest such

power in any person to whom he might lawfully have conveyed such property, to be by such assignee or assignees executed for the benefit of all and every the creditors of such prisoner as aforesaid."

1 & 2 GEO. IV. c. 93.

"An Act for vesting all Estates and Property, occupied by or for the Naval Service of this kingdom, in the Principal Officers of his Majesty's Navy, and for granting certain powers to the said Principal Officers and Commissioners. [10th July, 1821.]

"Whereas divers manors, messuages, lands, tenements and hereditaments, have been at various times purchased for the use of the several departments, of or belonging to the naval service of this kingdom, and conveyed to several different persons in trust for his Majesty and his royal predecessors, and his and their heirs and successors, and the same have been placed under the charge of the said several departments respectively: And whereas it may be expedient that such parts of the said manors, messuages, lands, tenements, and hereditaments, as may not be wanted for the use of the said service, should from time to time be sold and disposed of: And whereas for effectuating such sales, it is necessary that all and every the said manors, messuages, lands, tenements and hereditaments, so already purchased, or used and occupied by or for the said service, and all other messuages, lands, tenements and hereditaments that may be hereafter purchased, or in any manner used and occupied by or for the said service, should be vested in the principal officers and commissioners of his Majesty's navy for the time being; Be it therefore enacted," &c., "that immediately from and after the passing of this act, all manors,

messuages, lands, tenements and hereditaments, which have been heretofore purchased, or taken by or in the name of any person or persons, in trust for his Majesty or his royal predecessors, and his or their heirs and successors, for the use of all or any of the several departments of or belonging to the naval service of this kingdom, by whatever mode of conveyance the same shall have been so purchased or taken, either in fee or for any life or lives, or any term or terms of years, or any other or lesser interest, and all erections and buildings which now are or which shall or may be hereafter erected and built thereon, together with the rights, members, easements and appurtenances to the same respectively belonging (*other than and except such messuages, lands, tenements and hereditaments as may be of copyhold tenure,*) shall be and become and remain and continue vested in the principal officers and commissioners of his Majesty's navy for the time being, and their successors in the said office, according to the respective nature and quality of the said manors, messuages, lands, tenements and hereditaments, and the several estates and interests of and in the same hereditaments respectively, in trust for his Majesty, his heirs and successors, for the service of the said several departments of the said naval service, or for such other public service or services as his said Majesty, his heirs or successors, shall from time to time by any order in council be pleased to direct."

S. 4. "And be it further enacted, that it shall and may be lawful for the said principal officers and commissioners of his Majesty's navy for the time being, or any three or more of them, by and under the authority of the said Lord High Admiral or commissioners for executing the said office of Lord High Admiral for the time being, or any three or more of them, to sell, exchange or in any

manner dispose of, or let or demise, as well any of the freehold and leasehold manors, messuages, lands, tenements or hereditaments respectively, which shall be vested in them, under and by virtue of this present act, with their respective appurtenances, as also any of the *copyhold* messuages, lands, tenements and hereditaments, which shall have been surrendered to and vested in any person or persons, and his, her or their heirs and assigns, in trust for his said Majesty or any of his predecessors, his or their heirs and successors, for the use of the said several departments of the said naval service or any of them, either by public auction or private contract; and as to the said freehold and leasehold manors, messuages, lands, tenements and hereditaments, that it shall and may be lawful to and for the said principal officers and commissioners or any three or more of them, and as to the said *copyhold* messuages, lands, tenements and hereditaments, that it shall and may be lawful to and for the said person or persons, in whom the same shall be so vested as aforesaid, in due form of law, to convey, surrender, assign or make over, or to grant or demise the same respectively, as the case may require, to any person or persons who shall be willing to purchase or take the same respectively; and also to do any other act, matter, or thing in relation to any such manors, messuages, lands, tenements and hereditaments which shall by the said Lord High Admiral, or the commissioners for executing the office of Lord High Admiral, or by the said principal officers and commissioners of his Majesty's navy, be deemed beneficial for the public service in relation thereto, or for the better management thereof, which might be done by any person or persons having a like interest in any such like manors, messuages, lands, tenements or hereditaments."

S. 5. " And be it further enacted, that the monies to arise and be produced by the sale or exchange of any of the said manors, messuages, lands, tenements or hereditaments, which shall be sold or exchanged under the provisions of this present act, shall be paid by the respective purchaser or purchasers thereof, or the person or persons making such exchange, unto the treasurer of his Majesty's navy for the time being, or to such other person or persons as the said principal officers and commissioners of his Majesty's navy for the time being, or any three or more of them, shall direct or appoint to receive the same, for the use of his Majesty, his heirs and successors; and that the receipt of the said principal officers and commissioners or of any three or more of them, or of the said treasurer for such monies, (such receipt to be indorsed on every such conveyance, surrender or assignment as aforesaid), shall effectually discharge the purchaser or purchasers, or person or persons by whom or on whose account the same shall be paid."

S. 6. " And be it further enacted, that immediately from and after the payment of such purchase money, and the execution of every such conveyance, surrender and assignment as aforesaid, the purchaser or purchasers therein named, shall be deemed and adjudged to stand seized and possessed of the manors, messuages, lands, tenements and hereditaments which shall be so purchased by and conveyed, surrendered, assigned or made over to him, her or them respectively, freed and absolutely discharged of and from all, and all manner of prior estates, leases, rights, titles, interests, charges, incumbrances, and demands whatsoever, which can or may be had, made or set up in, to, out of, or upon or in respect of the same manors, messuages, lands, tenements or hereditaments, by any person or persons whomsoever, on any

account whatsoever (save and except such estates, leases, rights, titles, interests, charges, incumbrances, claims, and demands, as in any such conveyance, surrender or assignment shall be excepted)."

8. 7. "Provided always, and be it further enacted, that in case any person or persons shall have any just and legal or equitable right to any of the manors, messuages, lands, tenements and hereditaments, which shall be so sold and conveyed as aforesaid, or to any part or parts thereof, or to any charge, incumbrance or demand affecting the same, and (not being under any of the disabilities hereinafter mentioned) shall *within five years* next after every such right or claim shall by law or equity accrue to, or become vested in him, her, or them respectively, or being *femes covert*, (except *femes covert* whose estates have been or may be sold under the authority of this or any other act of Parliament for that purpose,) persons within the age of twenty-one years, in prison or out of this kingdom, or not of whole mind at the time of such sale and conveyance as aforesaid, shall, within five years next after they shall respectively come and be discovert, at their full age of twenty-one years, out of prison, within this land, or of whole mind, make out and establish such right or claim to the satisfaction of the principal officers and commissioners of his Majesty's navy for the time being, then and in such case the said principal officers and commissioners shall make or cause to be made a fair and reasonable compensation or satisfaction for every such right and claim so made out and established as aforesaid; but such compensation or satisfaction shall not in any case exceed the amount of the purchase-money or purchase-moneys which shall have been paid to and received by the said principal officers and commissioners, or the said treasurer, for the manors, messuages,

lands, tenements and hereditaments in respect whereof such right or claim shall be so made out as aforesaid, or a proportional part thereof, exclusive of the value of any buildings or improvements which shall have been erected or made thereon, for the use of any of the departments of the said naval service."

S. 10. " And be it further enacted, that it shall be lawful for all bodies politic or corporate, ecclesiastical or civil, and all feoffees or trustees for charitable or other purposes, and for all tenants for life and tenants in tail, and for the husbands, guardians, trustees, committees, curators, or attornies of such of the owners or proprietors of, or persons interested in any manors, messuages, lands, tenements or hereditaments which have been or may be hereafter agreed to be taken or purchased for the use of the several departments of the said naval service, or any of them, as shall be *femes covert*, infants, lunatics, idiots, or persons beyond the seas, or otherwise incapable of acting for themselves, to contract and agree with the said principal officers and commissioners of his Majesty's navy for the time being, either *for the absolute sale or exchange of any* such freehold or *copyhold* manors, messuages, lands, tenements or hereditaments, *or for the enfranchisement of any copyhold* messuages, lands or hereditaments, or sale of any reversion after any estate or estates for lives or years, or for the grant of any lease either for life or lives, or for any term of years certain herein, or for such period as the exigency of the public service shall require, and to convey, *surrender*, demise or grant the same accordingly; and all contracts, sales, conveyances, enfranchisements, surrenders, leases and agreements, which shall be made in pursuance hereof, shall be valid and effectual in law to all intents and purposes whatsoever, and shall be a complete bar to all

dower and claims of dower, estates tail and other estates rights, titles, trusts and interests whatsoever."

[VIDE also an act of 19 Geo. 3. c. 45. to enable the chancellor and council of the DUCHY OF LANCASTER to sell and dispose of certain fee farm rents, and other rents, and to enfranchise copyhold and customary tenements, within their survey, and to encourage the growth of timber on lands held of the said Duchy.]

[AND NOTE that *Copyholds* are excepted out of the REGISTER ACTS of 2nd & 3d Anne c. 4. for the *West Riding of Yorkshire*; the 6th Anne, c. 35. for the *East Riding of Yorkshire*, and the town and county of the town of *Kingston-upon-Hull*; the 8th Geo. 2. c. 6. for the *North Riding of Yorkshire*; and also the 7th Anne c. 20. for *Middlesex* (168)].

(168) It has been very properly suggested that as the interest of a lessee of *copyholds* is a common law interest, (see *ante*, pt. 1. pa. 525), it is advisable to register

"such leases of copyhold estates as, if the estate were freehold, would require registry." Sugd. Vend. & Purch. 604. [5th Ed.]



APPENDIX

TO

THE SECOND AND THIRD PARTS.



*(Deed of Covenant to levy a fine in the Court of
Ancient Demesne.)*

THIS indenture, made &c., between A. B. of &c. (the first and eldest son and heir of the body of B. B. late of &c, deceased) and M. B. the wife of the said A. B., of the one part, and C. D. of &c. of the other part. Whereas the said A. B. by virtue of the uses and limitations contained in an indenture of release and settlement, bearing date, &c. and made between, &c.' [ar, in the last will and testament of &c.] is seised of or well entitled to the messuages, lands, and hereditaments hereinafter described, lying within the manor [or liberty] of &c. with their appurtenances, for an estate to him and the heirs male of his body, with remainder to him the said A. B. for an estate in fee simple, as the right heir of the said B. B. deceased. And whereas the said A. B. hath contracted with the said C. D. for the sale to him of the aforesaid hereditaments with their appurtenances, and the

fee simple and inheritance thereof in possession, at or for the price or sum of £—. *Now this indenture witnesseth*, that for and in consideration of the sum of £—, &c. [in the usual form as paid by C. D. to A. B.] and for the purpose of barring the estate in tail male, to which the said A. B. is now entitled as aforesaid, of and in all and singular the messuages, lands, and hereditaments hereinafter described, and of limiting and assuring the same hereditaments with their appurtenances to the use of the said C. D. his heirs and assigns for ever. The said A. B. doth hereby for himself, his heirs, executors, and administrators covenant, promise, and agree with and to the said C. D. his heirs and assigns, that he the said A. B. or his heirs, and the said M. B. his wife, (the said M. B. hereby consenting,) shall and will at the costs and charges of the said A. B., his heirs, executors, or administrators, in due form of law, before the feast, &c. next ensuing the date of these presents, acknowledge and levy one fine, upon the acknowledgment of right, in the court of ancient demesne of the aforesaid manor [or liberty] of &c. according to the common usage there, unto the said C. D. and his heirs, of all and singular the said messuages, lands, and hereditaments hereinafter described, with their appurtenances, by the names and descriptions of — messuages, — acres of land, — acres of meadow, and — acres of pasture, with the commons and appurtenances thereunto belonging, in — and — within the aforesaid manor, [or liberty], or by such other name or names, quantities, qualities, and descriptions as will effectually comprise the same, and may for that purpose be deemed most expedient. Which said fine so as aforesaid, or in any other manner to be levied, it is hereby agreed and declared by and between the said parties to these presents, shall enure, and be deemed, construed

and adjudged to enure to the only proper use and behoof of the said C. D., his heirs and assigns for ever.

(*A FINE upon acknowledgment of right, in a Court of Ancient Demesne.*)

The Manor of _____ } The Court Baron of A. Z. lord
in the County of _____ } of the said manor, holden in and
for the said manor, on _____ the _____ day of _____
in the _____ year of the reign of our Sovereign
Lord George the fourth, by the grace of God, of
the united kingdom of Great Britain and Ireland,
King, Defender of the Faith, and in the year of
our Lord _____.

Before, G. H. }
 I. K. } Suitors of the said court.

Present also, J. S. Steward.

W. Y. Bailiff.

At this court came C. D. in his own proper person, and brought into the court the king's writ of right close, against A. B. and M. his wife, to be executed according to the custom of this manor, which writ is in the words following: George, &c. [here copy the whole of the writ] upon which the aforesaid C. D., according to the custom of this manor, made protestation to prosecute his said writ against the aforesaid A. B. and M. his wife, in form and nature of the king's writ of covenant at common law, to the end that the aforesaid A. B. and M. his wife perform the covenant to the said C. D., between them made, of the several tenements aforesaid, in the said writ set forth, and by them the said A. B. and M. his wife held of the manor of _____ aforesaid, and found pledges to prosecute his said writ, to wit, John

Doe and Richard Roe, upon which the aforesaid A. B. and M. his wife, were solemnly called and appeared, and upon this the said A. B. and M. his wife prayed license to agree with the aforesaid C. D. his suit aforesaid, and gave to the lord for such license, three shillings and four pence. And the agreement is such, to wit, that the said A. B. and M. his wife have acknowledged the said tenements, with the appurtenances, to be the right of him the said C. D. as those which the said C. D. hath of the gift of the said A. B. and M. his wife, and those they have remised and quit claimed from them the said A. B. and M. his wife, and the heirs of the said A. B. to the said C. D. and his heirs for ever; and moreover the said A. B. and M. his wife, have granted for themselves and the heirs of the said A. B., that they will warrant to the said C. D. and his heirs the said tenements, with the appurtenances, against the said A. B. and M. his wife, and the heirs of the said A. B. for ever; and for this acknowledgment, quitting claim, warranty, fine, and concord, end and agreement, the said C. D. gave to the said A. B. and M. his wife, twenty marks sterling, &c.

(Writ of Right Close.)

George the 4th, by the grace of God of the united kingdom of Great Britain and Ireland King, defender of the faith, &c. to A. Z., lord of the manor of——, [or to the bailiff of A. Z. of the manor of——] greeting. We command you, that without delay, and according to the custom of the manor of —— aforesaid, you do full right to A., of one messuage with the —— appurtenances in ——, whereof C. unjustly deforceth him, that we may hear no more clamour thereupon for want of right. Witness, &c.

(The form of entry, when such writ is brought into court, may be thus:)

AT this court cometh A. B., by E. F. his attorney, (by the letters patent of the said A. B.), and hath delivered to the aforesaid bailiff a certain close writ of the lord the now king, directed to the same bailiff, to be executed in form of law according to the custom of the manor aforesaid, the tenor whereof is in these words:

[George &c. To the bailiff of &c. greeting. We command you that without delay, and according to the custom &c. you do full right &c., of which &c. that we may hear &c.] And upon this the aforesaid A. B. finds pledges of prosecuting his writ aforesaid, to wit, T. and W., and protesteth to prosecute that writ in the same court, in form and nature of a writ of assise of novel disseisin at the common law, according to the custom of the manor aforesaid, saying, that the aforesaid C. unjustly and without judgment hath disseised him of his free tenement in _____, to wit, of the tenements aforesaid, with the _____ appurtenances, after the first &c. And he thereupon prayeth process to be made according to the custom of the same manor, &c. Therefore, according to the custom of the same manor, J. H., the *under bailiff* of the manor, and minister of this court, is commanded, that he cause those tenements to be re-seised of [with] the chattels which were taken therein, and the same tenements with the appurtenances to be in peace, until at the next court to be held before the aforesaid bailiff and suitors of the same court, to wit, on _____ next coming, here, to wit, at _____, and in the mean time to cause twelve free and lawful men of the neighbourhood of _____ aforesaid, within the precinct of the manor aforesaid, to view the

tenements aforesaid, and to cause their names to be put in the writ, and that he summon them by good summoners, that they be then here, to wit, at —, ready to make cognizance thereupon; and that he put by gages and safe pledges the aforesaid W. Y., his bailiff, if he shall not be found, that he be then here, to wit, at —, to hear that cognizance &c. And that he bring with him the names of the pledges, the summoners, and the said precept to him thereupon directed. And the same day is given to the aforesaid A. B. &c. (169).

[**VIDE** the statute of 59 Geo. 3. c. 80, concerning common recoveries, to be suffered by attorney in courts of **ANCIENT DEMESNE**; and to explain an act relative to the sale or mortgaging of estates of lunatics; *ante*, p. 312.]

(169) See F. N. B. 11 N. who refers for the form to the book of entries of pleas, f. 115, and adds, "And then at the day of the precept and process returned, the defendant ought to appear and plead in bar, or unto the writ, or other matter in such form as shall be in assise at the common law. And if the protestation be made in the

"nature of another writ, then the
 "precept shall be according unto
 "the nature of the process which
 "is given in such writ; and the
 "tenant when he cometh in shall
 "plead as he shall do in such
 "writ sued against him at the
 "common law, for the nature
 "of the protestation doth
 "alter and change the manner of
 "pleading for the tenant."

RULES

TO BE OBSERVED IN HOLDING

A

COURT LEET AND COURT BARON.

(Calling the Court.)

THE first preparatory step is for the steward to issue his precept to the bailiff of the manor to give the accustomed notice of the day appointed for the court. The following would appear to be the more usual form (170).

(Precept to summon a Court Leet and Court Baron.)

The Manor of _____ } To W. Y., bailiff of the said
in the County of _____ } manor, greeting—

THESE are to require you to give notice within the said manor that the court leet or law day and view of frankpledge, with the court baron of A. Z. Esquire, lord of the said manor, will be holden at the house of _____, at _____, within the said manor, on _____, the _____ day of _____ next, at the hour of _____ in the forenoon; and to warn all the residents and freehold tenants of the said manor, personally to be and appear at the place and time aforesaid, to do and perform their suit and service, and pay their quit rents, fines, and other duties, as of right they ought to perform and render at such courts respectively: And also to warn all constables, tything-men, and other pub-

(170) When a court baron is the form (A). *ante*, p. 97, will serve, held distinct from a court leet, by omitting the word 'customary.'

lic officers of the aforesaid leet and manor, then and there to attend and make and return their several presentments: And you are hereby required to summon twelve or more good and lawful men of the said manor, to be and appear at the aforesaid place and time, to enquire as well for our sovereign Lord the King as the lord of the said leet, of all such matters as to the said court do appertain; and be you there personally with the names of the persons you shall have so summoned, bringing with you also this precept. Given under my hand and seal this — day of —, in the year of our Lord —.

J. S. steward.

On receiving the precept, the bailiff is to affix a written notice of the day and hour appointed for the court, to the door of the parish church, or cause such notice to be publicly read in church, or otherwise, as the usage may be; and it is proper to give this notice at least fifteen days before the court (171). The form of it may be thus:

The Manor of — } Notice is hereby given, that a
in the County of — } court leet or law day, and view
 of frank-pledge, and a court baron of A. Z. Esquire, will
 be holden for the said manor on —, the — day of —
 next, at — o'clock in the forenoon, at the usual and ac-
customed place, being the house of —, at —, in the
 said county of —, when and where all the residents
 and freehold tenants of the said manor, and all pub-
 lic officers of the said leet and manor, and others hav-
 ing business to transact at such courts respectively, are
 required to attend. Dated this — day of —, &c.

W. Y., bailiff.

(171) But a shorter period is sufficient, *ante*, pt. 3. pa. 817.

THE COURT DAY.

(*Records of the Court Leet, Manor Rolls, &c.*)

It behoves the steward to be prepared with the records of the court leet, and the manor rolls, for such references as may be necessary to his guidance as the judge of the court leet, and as assessor and register of the court baron, in which the suitors are the judges; and also with a minute book for the entry of the proceedings of the particular court, having the style of the court already written in it.

And should it be the first court which the steward has holden for the particular manor, he will do well to read his appointment to the stewardship, to the tenants and residents assembled, previously to his entering on the business of the day.

(*Opening of the Court.*)

The bailiff is then to open the court by an audible proclamation, which (i. e. the O Yes) is to be repeated three times (172), thus—

O Yes, O Yes, O Yes; All manner of persons who owe suit and service to *the court leet, and law day*, and the court baron of A.Z. Esquire, now to be holden, or who have been summoned to appear at this time and place, draw near and give your attendance, every man answering to his name when called, and thereby saving his amercement: *God save the king and the lord of this leet.* [if it should be a court baron only, the words in italics are to be omitted.]

(172) In a court leet three proclamations are required to be made, but only one is necessary in a court baron. Kitch. 11, 12, cites 21 Ed. 4. 37.

(Resiant Roll, Suit Roll, Jury List.)

The bailiff is now to be called upon to make a return of the precept, which he is to do by putting the resiant roll, suit roll, and jury list into the hands of the steward; who should first call over the names of the resiants, marking against such as appear, 'app.,' and against such as are essoigned, 'ess.' (173).

Then the suit roll is to be called over, and the mark 'app.' placed against the names of those who answer.

This being done, the steward will read the list of jurors, entering the names of those who appear in his minute book (174), and then proceed to administer the oath to them, in this manner:

(Oath of the Foreman.)

A. B., You, as foreman of this jury, with the rest of your fellows, shall enquire and true presentment make of all such things as shall be given you in charge, and of all such other matters as shall come to your knowledge, presentable at this court: The king's counsel, your own, and your fellows', you shall well and truly keep: You shall present nothing out of hatred or malice, nor conceal any thing through fear, favour, or affection, but in all things you shall true and just presentment make, according to the best of your understanding: *So help you God.*

Then swear the rest of the jury, by three or four at a time, thus:

(173) *Ante*, pt. 3. pa. 880.

the steward may compel any

(174) There must be twelve jurors, *ante*, pt. 3. pa. 847. And if a sufficient number do not attend,

strangers to be sworn. *Ante*, pt. 3. pa. 846.

The like oath, which A. B. your foreman hath taken on his part, you and every of you shall well and truly observe and keep on your respective parts: *So help you God.*

And after the bailiff shall have signified the desire of the court for all men to keep silence, the steward will deliver his—

CHARGE to the Jury of the Court Leet,
to the following purport:—

THAT it is the steward's province to remind the jury that the court leet (frequently called a law day) is a court of record of great antiquity, and accounted the king's court, to which all persons resident within the jurisdiction of it, of the age of twelve years or upwards, with the exception of peers and prelates (175), and tenants in ancient demesne (176), owe suit and service, and that it is their duty to present and amerce such as make default.

THAT they are to present the names of such proper officers as either by the common law or by the particular usage of the manor &c. for which the court is held, are generally chosen and sworn at the leet, such as constables, tithing-men, aleconners, &c.; and to enquire of and present any neglect in the duties of the several public officers within the precincts of the leet.

THAT if any offence was presented at the last court by way of admonition, and the party has not obeyed the terms which were enjoined, it is their duty to certify the default to the court, in order that the amercement set for it may be levied; but that the jurisdiction of the leet jury, like that of a grand jury, is confined to things done or neglected to be done since the last court, and to things

(175) *Ante*, pt. 3. pa. 818.

(176) *Ante*, pt. 2. pa. 637.

happening immediately before their being sworn, and during their sitting.

THAT it is their province to enquire of and present all acts of petty treason (177), (except such as were not felonies at common law, or which, if created by act of parliament, are not directed by such act to be enquired of in leets;), and the crimes of murder, rape, manslaughter, arson, burglary, grand and petty larceny, *sacrilege*, accessaries, voluntary escape, and every other description of felony (178), and also negligent escape; in order that such offences (though not punishable in leet) may be certified to the king's justices according to the rules prescribed by law: And that they are likewise to enquire what lands and tenements, goods and chattels, any felon had at the time the felony was committed.

THAT it is also their province to enquire of and present all assaults and batteries with bloodshed; all railers, common scolds, eves-droppers, and sowers of discord: All conspiracies and combinations of victuallers, labourers, and artificers; the several offences of exacting excessive tolls; neglecting to pursue hue and cry lawfully raised; of vagrancy and noctigavancy; and the receiving of any such evil characters; of buying and selling by false weights and measures; and violating any assise; of forestallers, ingrossers, and regraters; and of all offences directed to be enquired of in leets by particular acts of parliament, as, for instance, the act of 1 Eliz. c. 17. intituled, "An Act for Preservation of Spawn and Fry of Fish." (179).

AND LASTLY, that it is the duty of the jury to enquire of

(177) Whether high treason is rape, *vid. ante*, pt. 3. sect. 5.
enquirable in leet, *vid. ante*, pt. 3. sect. 5.

(178) The court leet cannot enquire of murder; and as to

(179) See this stat. towards the end of the Appendix; and also the extract from it, *ante*, pt. 3. p. 830.

and present all obstructions of public bridges, ways, and paths, the stoppage or diversion of all public watercourses, the removal or destruction of landmarks, and any pound breaches, the neglect of cleansing pools, or of enclosing stone, marl, and other the like pits, or of the reparation of bridges and causeways, the laying of dung soil or other offensive thing in any public highway; and also every other act which may tend to the injury or nuisance of any of the king's liege subjects (180).

When the jury are so sworn and charged, the bailiff is to make further proclamation thus:

O Yes, O Yes, O Yes.

If any person or persons can inform this court or inquest of any treason, felonies, bloodshed, or any other offence, matter, or thing now given in charge, let them come in, and they shall be heard.

If any appear, the steward is to administer the following oath, and then the evidence is to go to the jury.

(The Oath to a person offering to give Evidence of Treason, &c.)

The evidence you shall give to the inquest now sworn, shall be the truth, the whole truth, and nothing but the truth: *So help you God.*

The steward will then administer the following oath to the several freehold tenants, constituting the homage of the court baron.

(180) I have not enumerated
 deodanda, estrays, waifes, treasure
 trove, and the like, among the
 presentments to be made by the
 jury of a court leet, as those fran-
 chises are not necessarily incident
 to a leet, even when it is appended

to a hundred or manor, though
 they may, it should seem, be
 claimed by the lord of a leet, *by*
prescription, and then of course
 they should be enquired of as in
 the court baron. See Br. Estray,
 pl. 15. lb. Incidents 38. lb. Leet 49.

(Oath of the Foreman.)

You, as foreman of this homage, with the rest of your fellows, shall enquire and true presentment make, of all such things as shall be given to you in charge; and of all such other matters as shall come to your knowledge, presentable at this Court: You shall present nothing out of hatred or malice, nor conceal any thing through fear, favor, or affection, but in all things shall true and just presentment make, according to the best of your understanding: *So help you God.*

Then swear the rest of the homage, by three or four at a time, thus:

The like oath, which A. B. your foreman hath taken on his part, you, and each of you, shall well and truly observe and keep on your respective parts: *So help you God.*

And then the steward will deliver his

Charge to the Homage,

to the following purport:

THAT the court baron is not a court of record, and is altogether different in its character from the court leet:

THAT in the latter (which is deemed the King's court) the steward presides as judge, but that in the court baron, which is the lord's court, the homage are the judges; and that the steward (though a constituent part of the court) sits there as register and assessor only.

THAT it is their duty, as the homage of the court baron, and possessing judicial authority, to enquire of the general rights of the lord of the manor, and more particularly of such as may have accrued subsequently to the then last court, bearing in recollection that such seignioral rights as are referrible to land of customary or copyhold tenure,

are not within the jurisdiction of the court baron, but are to be enquired of only in the court denominated the customary court.

THAT the attention of the homage is especially to be directed to any possible advantages to the lord, by reason of any reliefs payable by the custom of the manor, on death or otherwise (181); or by reason of any escheats occasioned by the death of any of the freehold tenants, without leaving heirs inheritable to their lands (182); or in consequence of the forfeiture of freehold lands by any felonious act; or of any deodands, estrays, waifes, treasure trove, or other manorial franchises (183).

THAT it is also the duty of the homage to enquire whether any boundary stones, or landmarks, between the particular manor and any other manor, or between the lands of any of the free tenants, may have been removed; and whether any encroachments may have been made upon the wastes of the lord, or upon the commonable rights of such tenants; and of any breach of the lord's pound: And whether the several persons who owe suit and service to that court, have duly attended to render and perform the same, or wherein and by whom any default may have been made, and to set a reasonable amercement on any such defaulters (184); and generally to enquire of all rights, and of all offences, both of commission and omission, as between the lord and the freehold tenants of the manor, and as between tenant and tenant, with reference particularly to any existing by-law, established by the custom of the manor (185); and to make their presentments and orders accordingly.

(181) *Ante*, pt. 3. pa. 716, 718, 766, 771-3, 774-9.

719, n. 111.

(184) *Ante*, pt. 3. pa. 712, 720,

(182) *Ante*, pt. 3. pa. 740 *et seq.* &c.

(183) *Ante*, pt. 3. pa. 750, 760,

(185) *Ante*, pt. 3. pa. 726, &c.

Whilst the jury of the leet are absent preparing their presentments, the steward may proceed in the business of the court baron. [See PRECEDENT of roll of court baron, *post*. 396.]

On receiving the presentments from the homage, the steward will administer the following oaths to the Affeers and the Hayward.

(Affeeror's Oath.)

You shall well and truly affeer and assess the several amercements now to you remembered, and therein spare no one through fear, favour, or affection, nor enhance any one through prejudice, hatred, or malice: *So help you God.*

(Hayward's Oath (186).)

You shall well and truly execute the office of Hayward for this manor, until you be thereof discharged according to due course of law. You shall from time to time present all pound breaches, estrays, waives, and all other matters and things falling within the duties of your office, justly, and without favour or affection: *So help you God.*

I have shewn that it is seldom necessary or desirable to administer the oath of fealty to a newly admitted tenant (187). When it is deemed expedient, the following form will serve.

(Oath of Fealty.)

You swear to become a true and faithful tenant to A. Z. Esq. lord of this manor, for the estate to which you are

(186) I have placed the Hayward's oath under the head of court baron, as the office appears to be more immediately connected with that court than with the court

leet, but the Hayward is frequently sworn at the leet.

(187) *Ante*, pt. 1. ch. 7; pt. 3. pa. 711.

now admitted tenant: you shall from time to time bear, pay, and perform all such rents, duties, services, and customs in respect of the same estate as are due and of right accustomed: you shall from time to time be ordered and justified in all things at the lord's court, to be holden in and for this manor, as other the tenants of this manor are, shall, or ought to be; and you shall in all things demean yourself as a faithful tenant ought to do: *So help you God.*

When the leet jury have agreed on their presentments, they are to re-enter the court. And the steward will enquire,

Gentlemen,—Have you agreed on your presentments? to which they will reply, yes; and the presentments are then to be handed over by the foreman to the steward, who will say, Gentlemen, do you desire and consent that I should alter any matters of form in your presentments, not altering matters of substance? to which the jury reply, *yes*.

Then the steward will swear the officers presented by the jury (188), and proceed to affeer the several amerancements.

(The Bedell or Bailiff's Oath.)

You shall well and truly serve our Sovereign Lord the King and the lord of this leet, in the office of bailiff for the year ensuing, or until you shall be thereof discharged according to due course of law: you shall duly execute all process to be directed unto you from the steward of this court; and diligently and faithfully collect and account for all rents, profits, and revenues, and in all things demean yourself as a true and faithful bailiff ought to do: *So help you God.*

(The Constable's [or Tithing-man's] Oath.)

You shall well and truly serve our Sovereign Lord the King, and the lord of this leet, in the office of constable for the parish [tithing or hamlet] of —, for the term of one whole year next ensuing, or until you be thereof discharged according to due course of law: you shall execute all lawful process sent to you, and by hue and cry, or otherwise, use your utmost endeavours to apprehend and secure all felons, riotous, disorderly, and idle persons, and others guilty of a violation of the laws of this realm, and shall in all things faithfully and diligently demean yourself in the aforesaid office: *So help you God.*

(The Aleconner's Oath.)

You shall well and truly serve our Sovereign Lord the King, and the lord of this leet, in the office of aleconner or assizer for the parish [tithing or hamlet] of —, for the term of one whole year next ensuing, or until you be thereof discharged according to due course of law: you shall present all offences cognizable by this court which may come to your knowledge, without fear, favour, or affection, and in all things faithfully and impartially discharge the duties of the aforesaid office: *So help you God.*

(The Affeeror's Oath.)

[See this form as applicable to courts baron, *ante*, p. 392.]

(Adjournment of the Court.)

[IF it should be found necessary, the court may be

adjourned by a proclamation to be made by the bailiff thus :

O Yes, O Yes, O Yes.

All manner of persons who have any thing more to do at this court have leave to depart, giving their attendance here again at _____ o'clock of this day.

On the reassembling of the court, the bailiff is to make the following proclamation :

O Yes, O Yes, O Yes.

All manner of persons who were adjourned over to this time and place draw near and answer to your names, each person as he shall be called.

Then the steward should call over the jury list of the leet.]

The above proceedings are to be entered by the steward in his minute book, ending thus :

It is further agreed and ordered, that the steward of this court may alter matters of form in these presentments, not altering matters of substance; and then he will subjoin these words :

' We present this as our verdict,'

to which the jury and homage will subscribe their names,

A. B.	}	Jury men.		A. B.	}	Homagers.
C. D.				C. D.		
&c.				&c.		

When the bailiff will discharge the court by the following proclamation :

O Yes, O Yes, O Yes.

All manner of persons who have appeared this day at the court leet and court baron of &c., may now depart, keeping their day and hour on a new summons.

God save the king, &c.

PRECEDENTS OF COURT ROLLS, &c.

(Rolls of Court Baron.)

The Manor of _____ } The Court Baron of A. Z.
in the County of _____ } Esquire, lord of the said manor,
 holden in and for the said manor, on _____ the _____
 day of _____, in the _____ year of the reign of our
 Sovereign Lord George the Fourth, by the grace
 of God, of the united kingdom of Great Britain
 and Ireland, King, Defender of the Faith, and in
 the year of our Lord _____. Before (189),

Homage { A.B. Foreman. }
 { C.D. } Sworn. { P. Q.
 { E. F. } { R. S.
 { &c. } { T. W.
 { &c.

respectively, suitors of the said court.

PRESENT ALSO, J. S. steward.

W. Y. bailiff.

(*Presentment of Tenants neglecting to perform their
 Suit.*)

At this court the homage being sworn and charged by
 the steward upon the articles of the court baron, do upon
 their oaths present, that G. H., I. K.,
This amercement is L. M., N. O., &c. respectively, free-
affeer'd at the sum hold tenants of this manor, have
of 5s. for each de- neglected to appear and to per-
faulters, by us, form the suit and service which
 they owe at this court, and they
 are respectively in mercy (190).

Affecors { A.B. }
 { C.D. } Sworn.

(189) By prescription a court
 baron may be held before the
 steward. *Ants*, pt. 3. pa. 693.

(190) It is the more usual way
 for the homage to adjudge the
 party to be amerced in general

(Presentment of the death of a Freeholder, and Proclamation for the Heir to take up his Estate.)

At this court, the homage also present that T. B., who held to him and his heirs freely of the lord of this manor, a messuage or tenement, and about ____ acres of land; situate at ____, with the appurtenances, by fealty, suit of court, heriot, relief, and the yearly rent of 6d., died seised thereof since the last court, and that G. B. is the only son and heir of the said T. B., wherefore proclamation is made for the said G. B. to come in his own proper person at the next court to be holden for this manor, and take up the aforesaid premises.

(Presentment of the death of a Freeholder, and general Proclamation.)

At this court, the homage also present that C. M., who held to him and his heirs freely of the lord of this manor about ____ acres of land, situate at ____, with the appurtenances, by fealty, suit of court, heriot, relief, and the yearly rent of 4d., died seised thereof since the last court, and thereupon proclamation is made for any person or persons claiming title to the aforesaid freehold land, with the appurtenances by descent, devise, or otherwise, to appear at the next court to be holden for this manor, and to take up the same.

(Admittance of the Heir of a Freeholder after Proclamation at a former Court.)

At this court came J. L., the only son and heir of B. L.,

terms, according to this form, the latter practice prevails, to submit though sometimes they amerce in a particular sum, which would seem to be good without afferment; but it is not unusual when the reasonableness of the amercement to assessor. *Ante*, pt. 3. pa. 723.

whose death was presented at the last court holden for this manor, and was admitted tenant to a messuage or tenement, and about ____ acres of land, situate at ____, and held freely of this manor by fealty, suit of court, heriot, relief, and the yearly rent of 8d., and whereof the said B. L. was seised to him and his heirs at the time of his decease; and the said J. L. paid the lord for a relief the sum of ____, and his fealty is respited.

(Presentment of the death of a Freeholder, and Admittance of his Devisee.)

At this court the homage present that M. R., who held to him and his heirs freely of the lord of this manor a certain messuage, situate at ____, with the appurtenances, by fealty, suit of court, heriot, relief, and the yearly rent of 3d., died seised thereof since the last court, whereupon a heriot accrued to the lord of this manor; and afterwards at this court came F. N. and produced to the homage the last will and testament of the said M. R., bearing date, &c. whereby he devised the aforesaid estate unto the said F. N. and his heirs for ever; and thereupon the said F. N. was admitted tenant to the aforesaid messuage with the appurtenances, and paid the lord for a relief the sum of ____, and his fealty is respited.

(Presentment of Sale by a Freeholder and Admittance of the Purchaser.)

At this court the homage present that B. M., since the last court, sold to G. D. certain closes, containing about ____ acres, situate at ____, and holden freely by him the said B. M. of the lord of this manor, by fealty, suit of court, heriot, relief, and the yearly rent of 5d. (191), and

(191) In some manors the lord is entitled to a heriot on alienation, *ante* pt. 1. pa. 431; and when that is the case, the advantage thus accruing to the lord should be stated in the presentment.

afterwards at this court came the said G. D., and was admitted tenant to the aforesaid closes, with the appurtenances, and his fealty was respited (192).

(Presentment of Advantages accrued to the Lord by Escheat, &c.)

At this court the homage present that M. R., a freehold tenant of this manor, departed this life since the last court, and that they have reason to suppose that he did not leave any heir inheritable to his estate held of this manor.

They also present that on the — day of — instant, a black colt strayed into this lordship, and that it is now in the possession of A. B. [Here may follow the presentment of any goods waived, and of any deodands, &c.]

(Presentment of Encroachments &c.)

At this court the homage present that A. B., since the last court, hath dug up and inclosed part of the waste grounds of the lord of this manor, situate at —.

And they also present that C. D. hath encroached upon the rights of the lord of this manor, by inclosing a certain part of the waste lands adjoining the estate of S. R., in the occupation of E. G. (193).

At this court the homage present that T. W. hath since the last court, broken up and inclosed part of the commonable lands of this manor, contrary to the tenor of the order or by-law made at the last court, and hath thereby incurred the penalty thereof. (194).

(192) Sometimes also a relief is payable on alienation, *ante*, pt. 3. pa. 719, n. 111.

though they ought to be presented for the lord's information. *Ante*, pt. 3. pa. 724.

(193) These acts, which create a private injury only to the lord, are not the subject of amercement,

(194) No further affectment can be made of this penalty. *Ante*, pt. 3. pa. 729. Indeed no affect-

At this court the homage present that S. L. hath, since the last court, dug and carried away the turf of part of the commonable lands of this manor, contrary to the tenor of an order or by-law made at a court, held the ____ day of _____, and confirmed at the last court, and hath thereby incurred the penalty of such order or by-law.

(By-laws and Orders.)

At this court, (pursuant to an immemorial custom in this behalf,) the following orders or by-laws are made by the homage.

IT IS ORDERED that the Hayward shall impound any cattle, horses, asses, sheep or pigs, which the proprietors or occupiers of inclosed grounds, adjoining the roads or lanes within this manor, shall suffer to go beyond their respective boundaries in such roads or lanes, and that the following sums shall be paid to the Hayward by way of Pinlock, on the release of such cattle and other

These amercements are affeered (196) at 6s. for each horse or cow, 1s. for each ass or pig, and 4d. for each sheep, by us,

Affeerors { G.H. }
 { I. K. } Sworn.

animals, namely, 6d. for each horse or cow, 3d. for each ass or pig, and 2d. for each sheep, and the homage amerce every person refusing or neglecting to make such payments in the after-mentioned sums, viz. the sum of 7s. for each horse or cow, 1s. 6d. for each ass or pig, and 6d. for each sheep (195).

ment of a penalty under a by-law is necessary, unless the sum be discretionary. *Ib.* pa. 723.

(195) The above order is framed on the supposition, that an inclosure award has entitled the proprietors of land to the herbage

of the roads and lanes within the manor.

(196) Unless the custom establishes the penalty, it is proper to affeer it. *Ante*, pt. 3. pa. 723. *Sup.* n. 194.

IT IS ORDERED that there shall be a clover hitching sown in _____ furlong from _____ to _____, in the ensuing spring, by the respective occupiers of land in the open fields of this manor, in proportion to the acreage of the lands they so occupy, and that such clover hitching shall be mounded off by Old St. Andrew's day next ensuing; and also that a vetch hitching shall be sown in the ensuing spring in _____ furlong, by the respective occupiers of open field lands within this manor, in proportion to the acreage of the lands they so occupy, and that such vetches shall be mounded off by the 25th

This amercement is day of March _____. And the
affeered at 25s. by us, homage amerce every person
 guilty of a breach of these orders,
 in the sum of 30s. for each of-
 fence.

Affectors

{ L.M. }
 { N.O. } Sworn.

IT IS ORDERED, that if any occupier of lands within this manor shall turn more than two horses upon the commons in respect of each yard-land he shall so occupy, he shall pay to the fieldsman the sum of 10s. for each horse

This amercement is exceeding the above stated num-
affeered at 20s. by us, ber, and the homage amerce
 every person guilty of a breach
 of this order in the sum of 25s.
 for every offence.

Affectors

{ R. S. }
 { T.W. } Sworn.

At this court the homage ratify and confirm all orders and by-laws made or confirmed at the last court, and not revoked or altered at this court.

*(Proceedings in Court Baron by Plaints of Debt,
Detinue, &c.)*

The bailiff is to make further proclamation; thus:
"If any persons will enter any plaints at this court,
"let them come forth and they shall be heard."

Should any persons appear, the steward will enter their
plaints after the following manner, leaving a sufficient
space to insert appearances, defaults, &c.

A. B. complains of C. D. of a plea of debt; 39s. 11d.

E. F. complains of G. H. of a plea of trespass on the
case to his damage of 38s. 10d.

G. H. complains of I. K. of a plea of detinue of goods
and chattels, to the value of 28s. (197).

Then call the plaintiff three times, thus :

'A. B. appear or you lose your plaint.'

If the plaintiff appear by his attorney, enter the war-
rant of attorney, viz. place the name of the attorney over
the name of the plaintiff.

Then call the defendant three times, thus :

'C. D. appear and answer to A. B. in an action of
debt, [or trespass, &c.];' and if the defendant has been
summoned, and his goods attached for neglect, add 'or you
forfeit your goods distrained (198), and further process
will be awarded against you.'

(197) See as to what actions do
and do not lie in Court Baron,
ante, pt. 3. pa. 688-9.

(198) *Ante*, pt. 3. pa. 730-1. I
have there shewn that the defen-
dant's appearance is to be compel-

led by distress infinite.

Sometimes by custom a *vendi-
tionis expensas* may be sued out,
and the goods sold after the third
attachment for non-appearance.
Scroggs 203.

If the defendant appear, enter such his appearance, after the plaint, viz. C. D. appears.

NOTE ; The plaintiff hath time to declare until the next court day after the defendant's appearance, and the defendant imparls until the next court day after, when he is to plead (199).

If, after the first process of summons is executed, the defendant appear, and the next court day after give a rule to declare, and the plaintiff do not file his declaration within the time, then upon such default the plaintiff is non-suited, and the defendant may have his costs to be taxed by the steward, for which taxing there is nothing due to the steward, but he receives 2s. for entering the judgment, and 2s. more for the execution (200).

If the action is not brought to issue, the plaintiff must enter a continuance, so as to continue the suit from court day to court day, or the defendant may take advantage of it.

(199) It might be considered quite a waste of time to enter fully into the rules of pleading in a work of this nature, especially as in every case of difficulty, the practitioner would feel it his duty to consult the able correlative treatises of Wentworth, Tidd, Lawes, Chitty, and other eminent special pleaders. I purpose therefore only to offer a few ordinary precedents of declarations, &c. in a suit in the court baron.

(200) *Scroggs* 204-5. Who says, "In every case where the plaintiff may have costs against the defendant, there if the plain-

tiff be nonsuit, or a verdict pass against him, the defendant shall have his costs, as in debt, trespass, covenant by specialty or upon contract, actions upon the case or upon the statute for personal wrongs. But executors or administrators shall not pay costs, either upon nonsuit or verdict, because their actions are not founded upon debts or contracts made to themselves: But if they bring actions for things done to themselves, as for taking away of goods from them, &c. and they be nonsuit, or verdict be against them, in such case they shall pay costs."

And the court may give a further day to the plaintiff, to declare, or to the defendant to plead, which is usually till the next court day, or fourteen days beyond.

When the defendant has pleaded, if the plaintiff join issue thereupon, they may proceed to trial the next court day, should they not proceed further by replication, rejoinder, sur-rejoinder, rebutter, sur-rebutter.

If the parties be at issue, the steward will send out *venire facias* to the bailiff, to summon a jury (201).

When the panel is returned, enter on the head thereof thus:

Jurors between A. B. *plaintiff*, and C. D. *defendant*, in a plea of debt [or trespass &c.].

And when the jury attend at the bar, bid the bailiff make proclamation thus:

‘ You good men who are here impanelled to try the issue between A. B. plaintiff, and C. D. defendant, answer to your names, every man as he is called, upon the pain and peril that shall fall thereon’ (202).

If twelve appear, then swear them one by one in this manner:

‘ You shall well and truly try the issue joined between the parties [or between A. B. plaintiff, and C. D. defendant], and a true verdict give according to the evidence:’ *So help you God*. And enter by every man’s

(201) But the trial by jury requires the consent of the parties, or a prescription. *Ante*, pt. 3. pa. 730.

(202) Challenges are allowed to the jurors as in the courts at Westminster. See Scroggs 242. Kitch. 178.

name, as he is sworn, *sw.*; and being all sworn, bid them stand together and hear the evidence.

Then call the witnesses, and as they appear to give evidence, administer the following oath :

‘ The evidence you shall give to this inquest, touching the matter in variance, shall be the truth, the whole truth, and nothing but the truth:’ *So help you God.*

After all the evidence is given, let the jury withdraw to agree upon their verdict; and when they return into court, the bailiff is to call them over, every man answering to his name distinctly.

The steward will then ask if they are agreed on their verdict, to which they reply by their foreman—Yes.

Then call the plaintiff three times, thus:

‘ A. B. appear, or you lose your plaint.’

And upon the plaintiff’s appearance, say to the jury :

‘ Do you find for the plaintiff, and in what damages, or for the defendant?’

Suppose the jury to reply, for the plaintiff, damages 30*s.*; then say, ‘ Hearken to your verdict: You find for the plaintiff, and assess damages, 30*s.*, and costs of snit, 12*d.*; and so you say all.’

The jury reply — Yes. Then bid the plaintiff pay the jury, and so enter the verdict.

[NOTE. If the verdict find matter incertainly, it is insufficient, and no judgment ought to be given thereupon; as if an executor pleads *plene administravit*, and issue is joined thereupon; and the jury find that the defendant hath goods in his hands to be administered, but do not find of what value.

So a verdict that finds part of the issue, and finds nothing for the residue, is insufficient for the whole, because they have not tried the whole issue wherewith they stood charged; but if the jury give a verdict of the whole issue, and of more, that which is more, is surplussage only, and shall not stay judgment.]

The whole business of the court being concluded, command the bailiff to make proclamation thereof (see *ante*, p. 395.); [or, in case a day is already fixed on for the succeeding court, let him say,]

O Yes, O Yes, O Yes.

‘ All manner of persons who have more to do at this court, come forth, and you shall be heard; otherwise all persons may depart hence, keeping their hour here, viz. ____ of the clock of the forenoon, on the ____ day of ____ next.’

N.B. After the court is ended, the defendant being condemned by verdict, and judgment entered as afore-said, a *fieri facias* shall be awarded to levy the debt, costs, and damages on the defendant's goods, which are to be taken by virtue thereof, and may be appraised and sold (202), to satisfy the plaintiff. And if the defendant hath not any goods whereupon levy may be made, the plaintiff is without remedy in this court, it being no court of record, and no *capias* lying therein (203): But the plaintiff might bring an action of debt at common law, and declare upon the judgment recovered in the court baron.

(202) Scroggs 200. But it the authorities, *ante*, pt. 3. pa. 731. would seem to be by custom only n. 166-7.

that the goods could be sold, see (203), *Ante*, pt. 3, pa. 687, 792.

*Forms of Precepts and Processes in the
Court Baron.*

(Warrant of Attorney to appear.)

A. C. D. do hereby desire and authorise you to appear for me in the court baron of A. Z. Esquire, lord of the manor of —, in the county of —, on —, the — day of —, in an action of debt for &c. [or detinue &c.] at the suit of A. B.: And for your so doing, this shall be your sufficient warrant. In witness &c.

(Condition of Bond for the Defendant's appearance.)

The condition &c. is, that if the above-bounden C. D. do appear at the next court, to be holden at &c., to answer to A. B. in an action of debt &c., and do also stand to such order as the court in that behalf shall adjudge according to law, then this present obligation to be void &c.

(Summons to appear.)

Manor of —, J. S. steward, to W. Y. bailiff of the foresaid manor, greeting: I command you to summon C. D., so that he be at the next court to be held at —, on —, the — day of — next, to answer A. B. of a plea of debt [or of detinue &c.] and this &c. Dated &c.

(Distringas.)

The Manor of &c. J. S. steward, to W. Y. bailiff of &c.

Because A. B. complains against C. D. of a plea of debt [or of detinue &c.] and has found pledges to prosecute &c. I command you to distrain the said C. D., by all his

goods and chattels, to answer to the said A. B. in the plea aforesaid, at the next court there to be held, on the — day of —, and have you there this precept, and in what manner &c. Dated &c.

(Second [or third] Distringas.)

The Manor of &c. J. S. steward, to W. Y. bailiff of &c.

I command you to bring to the next court to be held in and for the said manor, on the — day of —, all the goods and chattels of C. D., which you distrained by virtue of the precept to you in that behalf heretofore directed, at the suit of A. B., in a plea of debt [or of detinue &c.]; and that you further distrain the aforesaid C. D., by other his goods and chattels, so that he be at the said court, to be held &c., to answer the aforesaid A. B., in his aforesaid plea of debt [or detinue &c.]; and have there this precept. Dated &c.

(Supersedes to a Distringas on Appearance.)

The Manor of — J. S. steward, to W. Y. bailiff of &c.

Whereas I lately commanded you to distrain C. D. by all his goods and chattels, so that he should be at this court, to be held &c., to answer A. B., in a plea of debt of 39s. Now because the said C. D. hath appeared by G. H. his attorney, to answer the said A. B., I do therefore command you that you altogether forbear executing the said precept; and if you have taken or distrained any of the goods and chattels of the aforesaid C. D., then without delay that you cause the same to be redelivered to the said C. D. Dated &c.

(Replevin Bond.)

The Manor of — J. S. steward, to W. Y. bailiff of &c.

For as much as C. D. hath found me sufficient security, as well for prosecuting his suit which is for his cattle, to wit, — cows, which A. B. took and unjustly detains, as it is alleged; as also to make return, if return be adjudged; therefore in behalf of the lord of the manor aforesaid, I command you to replevy and cause to be redelivered to the said C. D. the cattle aforesaid; and that you summon the said A. B., by good and safe pledges to be before me at the next court to be held at — the — day of —, to answer the aforesaid C. D. in a plea of taking and unjustly detaining his cattle aforesaid. And the like &c. to me at the next court certify, or &c.: this omit not at your peril. Dated &c.

(Venditioni Exponas.)

The Manor of — J. S. steward, to W. Y. bailiff of &c.

I command you, that you expose to sale one steer by you taken and appraised at —, being the goods and chattels of C. D., which said steer was attached at the suit of A. B., in a plea of debt upon demand of 39s.; and at the court held &c. the aforesaid C. D., although he was solemnly called, did not appear, by which, according to the custom of this court from time whereof there is no memory of man to the contrary, the said steer is forfeited &c.; which money have you at the next court to be held &c., to satisfy the said A. B. his debt aforesaid; and have you there this precept, and in what manner &c. Dated &c.

(Sale of goods to Plaintiff, founded on the Venditioni Exponas (204).)

Know all men, by these presents, that I, W. Y., bailiff of &c., by virtue of a precept of *fieri facias*, from the steward

of the court baron of the said manor, to me directed, have levied of the goods and chattels of C. D., the sum of &c., being a debt due to A. B., and levied by virtue of the said precept to his use: In full satisfaction of which said sum of —, I do, by virtue of the precept or warrant to me directed, as aforesaid, assign, sell, and set over to the said A. B. all the goods and chattels in the appraisement hereto annexed, valued and nominated at the rate of —; To have and to hold the said goods and chattels, to him, his heirs, executors, and administrators, as his and their own proper goods, as fully and absolutely as I, the said W. Y. might, could, or ought to do, by virtue of the said precept and appraisement, or otherwise howsoever. In witness, &c.

(Declaration.)

The Manor of— { A. B. Plaintiff,
in the County of— { complains against
 { C. D. Defendant.

In a plea of trespass upon the case 30s. (205).

And whereupon the said A. B. by E. F. his attorney, complains, that whereas the aforesaid C. D., on the — day of —, in the — year of the reign of our Sovereign Lord George the Fourth, of the united kingdom of Great Britain and Ireland, King, defender of the faith, at — aforesaid, within the jurisdiction of this court, was indebted to the said A. B. in the sum of 39s. of lawful money of Great Britain, for so much money of the said A. B., at the special instance and request of the said C. D., by him the said A. B. to the aforesaid C. D., before that time advanced and lent: And also, in other 39s. of like lawful money of Great Britain, for so much money of

(205) See various forms of Declaration in Scroggs of Courts, p. 258, *et seq.*

the said A. B., at the like special instance and request of the said C. D., by him the said A. B., for the said C. D., before that time expended, laid out, and paid. And being so thereof indebted, the said C. D., in consideration thereof, afterwards, to wit, the same day and year, at _____ aforesaid, within the jurisdiction of this court: as aforesaid, assumed upon himself, and then and there faithfully promised the said A. B., to pay him the aforesaid two several sums of money, when he should be thereto afterwards required: And whereas also, the aforesaid C. D., afterwards, to wit, the same _____ day of _____, in the _____ year, &c. aforesaid, in _____ aforesaid, within the jurisdiction aforesaid, was indebted to the aforesaid A. B., in other 39*s.* of like lawful money of Great Britain, for so much money of the said A. B., by the aforesaid C. D., for the use of the said A. B., before that time had and received: And being so thereof indebted, the aforesaid C. D., afterwards, to wit, the same _____ day of _____ in the _____ year aforesaid, at _____ aforesaid, in the jurisdiction aforesaid, in consideration aforesaid, assumed upon himself, and then and there faithfully promised, that he the said C. D. would well and truly pay and satisfy unto him the said A. B., the aforesaid sum of money last mentioned, when he should be thereto afterwards requested. And whereas also, &c. [here you may lay other counts, proceeding as in the former]. Yet the aforesaid C. D., not at all regarding his several promises and assumptions aforesaid, but contriving and fraudulently intending the said A. B. in this behalf craftily and subtilly to deceive and defraud, the aforesaid several sums of money, or one penny thereof to the said A. B. hath not paid, or anywise for the same contented, (although the aforesaid C. D., afterwards, to wit, the same day and year last above said, at _____ aforesaid, in the jurisdiction afore-

said, was required so to do; but hath hitherto altogether refused, and still doth refuse to pay or anywise content him the said A. B., for the same, whereupon the said A. B. saith he is worse, and hath damage to the value of 39s. and whereof he brings his suit, &c.

Pledges to prosecute, { John Doe.
Richard Roe.

(General Issue.)

The Manor of _____ } In a plea of trespass upon the
in the County of _____ } case.

C. D. } And the said C. D., by G. H. his attorney, comes
ats. } and defends the wrong and injury, when &c. and
A. B. } says, that he is not guilty of the said supposed
grievances above laid to his charge, in manner
and form as the said A. B. hath above thereof
complained against him. And of this, he the
said C. D. puts himself upon the country.

In Debt.—And the said C. D., by G. H. his attorney, comes and defends the wrong and injury, when &c. and saith that he, the said C. D., did not undertake or promise, in manner and form as the said A. B. hath above thereof complained against him, and of this he puts himself upon the country, &c.

In Detinue.—And the said C. D., by G. H. his attorney, comes and defends the wrong and injury, when, &c. and saith that he doth not detain the said goods and chattels in the said declaration specified, or any part thereof, in manner and form as the said A. B. hath above thereof complained against him, and of this he the said C. D. puts himself upon the country, &c.

(Plea in bar to a Declaration.)

<p><i>The Manor of</i> ——— } <i>in the County of</i> ——— }</p>	<p>C. D. ats. A. B.</p>
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And the said C. D., by G. H. his attorney, comes and defends the force, injury and damages, and whatever else he ought to defend, when and where the court will take the same into consideration; and saith that the said A. B. ought not to maintain his said action thereon, against him, because he saith that the said declaration, and the subject matter therein contained, are insufficient in law for him the said A. B. to maintain his said action against the said C. D., to which said declaration the said C. D. is under no necessity, or in anywise bound by the law of the land to answer; and this he is ready to verify: Whereupon, for want of a sufficient declaration in this case, the said C. D. prays judgment of the said declaration, and that the said A. B. may be precluded from having his said action thereon against him, &c.

(Demurrer to Plea in Bar.)

And the said A. B. saith, that (notwithstanding any thing above alleged by the said C. D. in his plea) he, the said A. B., ought not to be precluded from having his said action thereon against the aforesaid C. D., because he saith that the said plea, in such manner and form as the same is pleaded by the said C. D., and the subject matter therein contained, are insufficient in law to preclude him the said A. B. from having his said action against the said C. D., to which said plea the said A. B. is under no necessity, nor in anywise bound by the law of the land to answer, and this he is ready to verify: Wherefore, by

the defect of a sufficient plea in this case, he the said A. B. prays judgment, and that his damages occasioned by the premises may be awarded to him, &c.

(Replication.)

And the said A. B. saith that he ought not to be precluded from his said action against the said C. D., because he saith that the said C. D. hath not paid to the said A. B. the sum of 39s., in full satisfaction and discharge of all the several sums of money due from the said C. D. to the said A. B., in such manner and form as the said C. D. hath above alleged in his plea; and this he prays may be enquired of by the country; and the said C. D. prays likewise the same (206).

(Foreign Plea.)

And the said C., in his proper person, comes and says that this court ought not to have further cognizance of the plea aforesaid, because he says the cause of action (if any accrued to the said A.,) accrued to him the said A., out of the jurisdiction of this court; to wit, at T., in the county of N., and not at —, in the said declaration named, or elsewhere within the jurisdiction of this court; and this the said C. is ready to verify: Wherefore he prays judgment, if this court can or will have further cognizance of this plea &c. [1 Wentw. 51.]

(Venire Facias.)

The Manor of ——— } J.S. steward to W.Y. bailiff of
in the County of — } the said manor, greeting:

I command you that you cause to come twelve good

(206) See further as to pleadings in suits in court baron, Scroggs of Courts, p. 281, et seq.

and lawful men of your bailiwick, that they be and appear at the next court to be held for the manor aforesaid, at &c., on &c., at ____ o'clock of the forenoon, to try such matters between parties and parties as shall then and there be put in issue [or to try the issue joined between A. B. plaintiff and C. D. defendant, of a plea of debt, &c.]; and this omit not at your peril. Dated, &c.

(Subpoena for Witnesses.)

The Manor of, &c.—J. S. steward to, &c. [name the witnesses] greeting:

I command you and every of you, that (laying aside all manner of excuses and delays whatsoever) you be in your proper persons at the next court to be held at &c., on &c., to testify and declare the truth in a certain suit depending in the aforesaid court, between A. B. plaintiff, and C. D. defendant, in a plea of debt [or detinue, &c.]; and herein fail not at your peril. Dated, &c.

(Levati Facias.)

The Manor of, &c.—J. S. steward to W. Y. bailiff of &c.

Because A. B. hath recovered against C. D. 30*s.* in a plea of debt [or detinue, &c.], and 15*s.* for his costs and charges, of which the aforesaid C. D. is convicted by judgment of the said court; I command you to levy according to custom the aforesaid 30*s.* adjudged to the said A. B. in the said court, and the said 15*s.* for his costs; and have you that money at the next court there to be held, on the ____ day of ____, to tender to the said A. B. for his aforesaid damages, and have there this precept, and in what manner; &c. Dated, &c.

(Fieri Facias in Debt.)

The Manor of, &c.—J. S. steward to W. Y. bailiff of &c.

I command you that of the *goods* and *chattels* of C. D. you cause to be made as well a certain debt of 39*s.* which A. B. has recovered in the said court against him, as 13*s.* 4*d.* which were adjudged to the said A. B. in the same court for his costs and charges by him, about his suit, in that behalf expended; and have that money at the next court, to be held on —, the — day of —, to render to the said A. B. for the debt and damages aforesaid, whereof the said C. D. is convicted; and this &c. Dated, &c.

(Fieri Facias in Case.)

That of the goods, &c. which in the said court, before the suitors of the same court, were adjudged to A. B. for his damages, which he had by occasion of a certain trespass on the case, done to the said plaintiff by the said defendant, at &c.; and have that money, &c.

(Fieri Facias in Assumpsit.)

Which in the said court, before the suitors of the same court, were adjudged to A. B. for his damages, which he had by occasion of certain promises and undertakings made to the said plaintiff by the said defendant, at &c.; and have that money, &c.

(Fieri Facias upon Verdict for the Defendant.)

The Manor of, &c.—J. S. steward to W. Y. bailiff of &c.

I command you, that of the *goods* and *chattels* of A. B. you cause to be made 32*s.* which were adjudged to C. D. in the said court, before the suitors of the same court, for

his damage, according to the form of the statute, which he sustained, by occasion that the said A. B. unjustly prosecuted a certain plaint in a plea of trespass upon the case against the said C. D., as is lately found by a certain jury of the country; and have that money at the next court there to be held, on the ____ day, &c. to render to the said C. D. for his damages aforesaid, whereof the said A. B. is convicted; and this, &c.

(Fieri Facias upon Nonsuit.)

That of the goods and chattels of A. B. you cause to be made sixteen shillings, which were adjudged to C. D. in the said court, before the suitors of the same court, according to the form of the statute in that case made and provided, for his damages, for that the said A. B. did not prosecute his plaint lately levied in the said court against the said C. D. in a plea of trespass on the case; and have that money at the next court, before the suitors of the said court, to be held there on the ____ day, &c. to satisfy the said C. for his costs and charges aforesaid, whereof the said A. is convicted; and this, &c.

(Wager of Law.)

I, C. D. do solemnly swear, in the presence of the Almighty God, that I do not owe A. B. the sum of &c., nor any part thereof, in manner and form as he hath declared against me: *So help me God.*

(The Oath of the Compurgators.)

I, J. K. [&c., each compurgator repeating his name] do swear that I do in my conscience believe, that what C. D. hath now sworn is strictly true: *So help me God.*

*(Forms of Writs in a real Action, commenced
in Court Baron (207).)*

(Writ of Right Patent.)

GEORGE the Fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, King, defender of the faith; To W. Earl of A. greeting: We command you, that without delay, you hold full right to W. K. Esq. of one messuage and twenty acres of land, with the appurtenances in D., which he claims to hold of you by the free service of one penny yearly in lieu of all services, of which R. A. deforces him. And unless you so do, let the sheriff of Oxfordshire do it, that we no longer hear complaint thereof for defect of right. Witness ourself at Westminster, the — day of —, in the — year of our reign.

Pledges of prosecution, { John Doe.
Richard Roe.

(Writ of Tolt, to remove the Action into the County Court.)

C. M. Esq. sheriff of Oxfordshire, to J. L., bailiff errant of our Lord the King and of myself, greeting: Because by the complaint of W. K. Esq., personally present at my county court, to wit, on —, the — day of —, in the — year of our Sovereign Lord George the Fourth, by the grace of God, of the united kingdom of Great

Britain and Ireland, King, defender of the faith, at Oxford, in the shire-house there holden, I am informed, that although he himself the writ of our said Lord the King of right patent directed to W. Earl of A., for this that he should hold full right to the said W. K. of one messuage and twenty acres of land, with the appurtenances in D., within my said county, of which R. A. deforces him, hath brought to the said W. Earl of A.; yet, for that the said W. Earl of A. favoureth the said R. A. in this part, and hath hitherto delayed to do full right according to the exigence of the said writ, I command you, on the part of our said Lord the King, firmly enjoining, that in your proper person you go to the court baron of the said W. Earl of A., at D. aforesaid, and take away the plaint which there is between the said W. K. and R. A., by the said writ, into my county court to be next holden; and summon by good summoners the said R. A., that he be at my county court on _____, the _____ day of _____ next coming, at Oxford, in the shire-house there to be holden, to answer to the said W. K. thereof. And have you there then the said plaint, the summoners, and this precept. Given in my county court at Oxford, in the shire-house, the _____ day of _____, in the year aforesaid.

(Writ of Pone to remove the action into the Court of Common Pleas.)

George the Fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, King, defender of the faith, to the sheriff of Oxfordshire, greeting. Put at the request of W. K., before our justices at Westminster, on the morrow of All Souls, the plaint which is in your county court by our writ of right, between the said W. K.

demandant, and R. A., tenant, of one messuage and twenty acres of land, with the appurtenances in D., and summon by good summoners the said R. A., that he be then there, to answer to the said W. K. thereof. And have you there the summoners and this writ. Witness ourself, at Westminster, the — day of —, in the — year of our reign.

(Writ of Right Patent quia dominus remisit curiam.)

George the Fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, King, defender of the faith, to the sheriff of Oxfordshire, greeting. Command R. A. —, that he justly and without delay, render unto W. K. one messuage and twenty acres of land, with the appurtenances in D. —, which he claims to be his right and inheritance, and whereupon he complains that the aforesaid R. unjustly deforces him. And unless he shall so do, and if the said W. shall give you security of prosecuting his claim, then summon by good summoners the said R., that he appear before our justices at Westminster, on the morrow of All Souls, to shew wherefore he hath not done it. And have you there the summoners and this writ. Witness ourself at Westminster, the — day of —, in the — year of our reign. Because W. Earl of A., the chief lord of that fee, hath thereupon remised unto us his court.

Pledges of
Prosecution.

{ John Doe,
Rich. Roe.

Summoner of
the within named
Richard.

{ John Den,
Rich. Fen. } Sheriff's return.

(Rolls of Court Leet and Court Baron.)

The Manor of ——— } *The Court Leet, with view of*
in the County of ——— } *Frank-pledge, and the Court Ba-*
 ———, Esq. for the manor of ———, held at
 ———, within the said manor, on ———, the — day
 of ———, in the — year of the reign of our Sove-
 reign Lord George the Fourth, by the grace of
 God, of the united kingdom of Great Britain and
 Ireland, King, defender of the faith, and in the
 year of our Lord——[Before J. S. steward.] (208).

A. B. } The jury for our So- { G. H.
 C. D. } vereign Lord the King { I. K.
 E. F. } and the lord of this leet. { L. M.
 &c. } { &c.

R. W. } Free suitors. { J. C.
 W. C. } { R. A.

Who being sworn and charged upon their oaths, touch-
 ing articles of the court leet as well as the court baron,
 present and say as follows :

(208) We have seen that a such custom exists, it would be
 court baron may, by prescription, better to omit the words between
 be held before the steward, brackets, and to substitute the
 and as that custom prevails in following lines :

chosen this form: But when no *Present at this court,*
 J. S. steward. W. Y. bailiff.

(Presentment of absent Resiants.)

The jury present that W. C., C. B., W. K., R. S., and
This amercement is M. E. are resiants within the
affeerred at the sum of precinct of this leet, and owe suit
6d. for each defaulter, and service at this court, but
by us, have respectively made default
 and are therefore severally in
 mercy.

Affeerors { A.B. }
 { C.D. } Sworn.

(Presentment of Officers.)

The jury also present E. S. and J. B. to be Constables
 for ———, who being present at this court, are sworn to
 perform the duties of their said office.

The jury also present J. W. to be Third-borough for
 ——— aforesaid, who being also present is sworn to per-
 form the duties of that office.

The jury also present R. B. to be Head-borough, for
 ———, who being also present at this court, is sworn to
 perform the duties of that office.

The jury also present C. D. to be Tithing-man for the
 hamlet of ———, who also being present, is sworn to per-
 form the duties of that office.

The jury also present W. T. and R. C. to be Aleconners
 within the jurisdiction of this leet, who being present, are
 sworn to the due execution of their said office.

The jury also present T. R. and C. J. to be Leather-
 sealers within the jurisdiction of this leet, who being pre-
 sent, are sworn to the due execution of their office.

The jury also present B. G. and C. W. to be Street-drivers within the jurisdiction of this leet, who being present, are sworn to the due execution of their office.

(Presentment of Nuisances, &c.)

The jury present J. B. for an encroachment made by placing a fence in a certain lane called _____, within the jurisdiction of this leet, to the common nuisance of all the king's liege subjects, and amerce him in the sum of £5.

This amercement is offered at the sum of £5. by us,

Affecors { A.B. } Sworn.
 { C.D. } (209).

The jury present that E. M. hath diverted a certain ancient watercourse, running from _____ to _____, and amerce him in the sum of 40s.

The jury also present that J. W. hath obstructed the free passage of the street called _____, within the jurisdiction of this leet, and amerce him in the sum of 20s,

The jury also present that A. B. hath neglected the repairs of a certain footpath, leading from _____ to the church of _____, and amerce him in the sum of 10s.

The jury also present W. L. for stopping up a certain common sewer or watercourse, leading from _____ to _____, and amerce him in the sum of 10s.

The jury also present B. M. and S. H. for resisting the execution of the duties of S. K. and L. M. the aleconners appointed at the last court held for this manor, and amerce them each in the sum of 5s.

(309) This will serve to shew the manner of affecting the several other amercements.

The jury also present that J. B., who was elected Constable at the last court held for this manor, is not here at this court to present that which to his office belongs:—Therefore they amerce the said J. B. in the sum of 5s.

The jury also present that G. L., who was elected Aleconner at the last court held for this manor, is not here at this court to present that which to his office belongs:—Therefore they amerce the said G. L. in the sum of 8s.

(Presentment of Felonies, &c.)

Treason, (as felony.)—The jury also present that W. T. of &c. at —, within the jurisdiction of this court, coined and fabricated one hundred pieces of gold money called sovereigns, and three hundred pieces of silver money called shillings, falsely and feloniously (the King's letters patent not previously obtained), against the peace of our sovereign Lord the King, his crown and dignity, and against the form of the statute in that case made and provided. [Kitch. 98.]

Burglary.—The jury also present that P. B., of &c., labourer, on the — day of —, at L., within the jurisdiction of this court, about the hour of —, in the night of the same day, feloniously broke and entered the dwelling-house of one &c., with the intent to rob the aforesaid —; and six silver spoons of the goods and chattels of the aforesaid —, of the value of —, then and there being feloniously took and carried away, against the peace of our Lord the King, his crown and dignity. [Kitch. 98-9.]

Highway Robbery.—The jury also present that J. D., of &c., labourer, on the — day of —, at S., within

the jurisdiction of this court, with force and arms, and against the peace &c., in the King's highway, there made assault upon G. M., and him the aforesaid G. M. then and there robbed, and 16s. of the goods and chattels of the aforesaid G. M. from the person of him the said G. M. feloniously took and carried away, against the peace &c. [Kitch. 99.]

Hue and Cry.—The jury also present that the aforesaid G. M. being so robbed raised great hue and cry, and the said J. D. as a felon, on the same day and year, from the place where he was so robbed, did freshly pursue to the town of, &c., and that none of the inhabitants there, upon the hue and cry aforesaid, the said J. D. did follow, and so the aforesaid felon escaped, in contempt of our sovereign Lord the King, and contrary to the form of the statute in such case made and provided; and therefore the said town of &c. in mercy, &c.

Rape.—The jury also present that D. L., of &c., yeoman, on the ____ day of &c., at ____, within the jurisdiction of this court, the close and house of &c. broke and entered, and upon one M. &c., the daughter &c., being in the peace of God and of our sovereign Lord the King, made an assault, and then and there against her will did ravish her the said M., and did carnally know her, against the peace &c. [Kitch. 98.]

Arson.—The jury also present that one T. B., of &c., yeoman, on the ____ day of &c., at I., within the jurisdiction of this court, with force and arms &c., wilfully and feloniously (of his malice aforethought) did burn and with fire destroy the dwelling-house of one C. against the peace &c.; therefore the bailiff of this manor is com-

manded to seize all the lands and tenements, goods and chattels of the said T. B., that he may answer for the same to the lord of this manor. [Kitch. 98.]

Larceny.—The jury also present that P. J., of &c., on the ____ day of &c., the close of one &c., at ____ aforesaid, broke and entered, and one table cloth, of the value of 9*d.* of the goods and chattels of the aforesaid &c. then and there found, feloniously took and carried away; therefore the bailiff of this manor is commanded to seize all the goods and chattels of the said P. J. into the hands of the lord of this manor. [Kitch. 100.]

Stealing Fish.—The jury also present that one J. L., of &c., yeoman, on the ____ day of &c., at I. aforesaid, within the jurisdiction of this court, about the hour of eleven in the night of the same day, a certain trunk of &c. broke and entered, and ten fishes called pike, of the value &c., of the goods and chattels of the aforesaid &c. from and out of his said trunk &c. then and there feloniously took and carried away, contrary to the peace &c.; therefore &c. [Kitch. 100.]

Accessory.—The jury also present that W. S., of I. aforesaid, yeoman, on the ____ day &c., at I. aforesaid, within the jurisdiction of this court, did counsel, procure, encourage, aid, and abet one L. M., of &c. feloniously to steal, take, and lead away one black cow, of the chattels of &c., of the value &c. then and there found, and by means of which counselling, procuring, encouraging, aiding, and abetting, the said L. M. on the said ____ day &c. feloniously stole, took, and drove away &c. [Kitch. 98.]

Assault with Bloodshed.—The jury also present that T. F., of &c., labourer, on the ____ day of &c. at I., within the jurisdiction of this leet, committed an assault with bloodshed on A. B., of &c., yeoman.

Rescue.—The jury also present that one B. R., of I. aforesaid, yeoman, was taken and arrested upon suspicion of felony, committed within the jurisdiction of this leet, and set in the stocks of this manor, and that one I. F., of I. aforesaid, labourer, on the ____ day of &c., at I. aforesaid, the aforesaid stocks with force and arms feloniously did break, and the said B. R. then and there did suffer to escape and go at large, against the peace &c.; therefore the bailiff is commanded &c. [Kitch. 100.]

Further Rescue.—The jury also present that T. L., of &c., yeoman, on the ____ day &c., at I., within the jurisdiction of this court, one calf, of the value &c., of the goods and chattels of one J. B. then and there found, feloniously took and carried away; and that W. Y., bailiff of the aforesaid manor, on the ____ day &c., at I. aforesaid, the aforesaid T. L. arrested upon suspicion of the said felony; and that W. F., of I. aforesaid, labourer, with force and arms &c., at I. aforesaid, on the said day and year, upon the aforesaid W. Y., in the peace of God and our sovereign Lord the King being, did make an assault; and the aforesaid T. L., being in the custody of the said W. Y., then and there feloniously took away, rescued, and suffered to go at large, contrary to the peace &c.; therefore the bailiff is commanded &c. [Kitch. 100.]

[FOR the PROCEEDINGS in COURT BARON, *vid. ante*,
p. 396.]

*(Forms of Warrants and Precepts in Court Leet.)**(Warrant to distrain for Amercements.)*

The Manor of _____ } J. S. steward, to W. Y., bailiff
in the County of _____ } of the said manor, greeting:

Estreat of Amercements at a certain court leet, with
 view of frank-pledge, and court baron of A. Z. Esquire,
 lord of the said manor, held in and for the said manor,
 this — day of &c.

J. B., constable, who neglected to appear at the
 said court, and present that which to his office } 3s.
 belongs, amerced in 5s. (affeer'd at)

G. L., aleconner, who neglected to appear at the
 said court, and present that which to his office } 2s.
 belongs, amerced in 3s. (affeer'd at)

You are hereby commanded to levy by distress of the
 goods and chattels of the several above-named defaulters,
 the several and respective sums of money set opposite to
 their respective names; and you are to answer the same
 when thereunto required.

J. S. steward. (L. S.)

*(Order for a Constable who did not appear at the
 Court, to be sworn into his Office by a Justice of
 the Peace.)*

The Manor of _____ } To A. B.
in the County of _____ }

Forasmuch as at the court leet holden this present

day, in and for the said manor, you are elected constable for the year ensuing: These are therefore to will and require you, upon receipt hereof, to take upon you the said office; and forthwith to repair to one of his Majesty's justices of the peace of the said county, before him to take your oath for the due execution of your said office: hereof fail not at your peril. Given under my hand and seal, the ____ day of ____.

J. S. steward. (L. S.)

(Warrant to bring an Offender against a particular Statute before the Steward of a Court Leet.)

The Manor of ____ } J. S. steward of the court leet
in the County of ____ } of the aforesaid manor, to the
to wit. } constables of ____, greeting:

Whereas complaint hath been made to me that J. W. hath &c. [set forth the facts] contrary to the statute in this case made and provided: These are therefore in his Majesty's name to will and require that you, some or one of you do bring the said T. W. before me to answer the premises, and further to do and receive as by the said statute in that behalf made is appointed: hereof fail not at your peril. Given under my hand and seal, the ____ day of ____

J. S. steward. (L. S.)

(A Mittimus upon the preceding Warrant.)

The Manor of &c. } J. S. steward &c., to the con-
to wit. } stables &c. and to every of them,
and to the keeper of his Majesty's gaol for the said county of ____, at ____, in the same county.

Forasmuch as it hath been duly proved before me that T. W. &c. [set forth the facts] contrary to the statute in that case made and provided: These are therefore in his Majesty's name to require that you, the aforesaid constables, some or one of you, do convey the said T. W. to his

Majesty's gaol aforesaid, and him there deliver to the keeper of the same, with this precept. And that you the said keeper do receive the said T. W. into the said gaol, and him there safely keep until he hath paid &c. and shall be thence discharged by due course of law: hereof fail not &c. Given &c.

J. S. steward. (L. S.)

(A Precept to bring a Scold to be tried at a Court Leet.)

*The Manor of _____ } J. S. steward of the court leet
in the County of _____ } of the said manor: To the con-
stables of _____, greeting:*

Forasmuch as C. F., of the parish of _____, in the said county, the wife of D. F., of the aforesaid parish of _____, in the county aforesaid, labourer, was at the court leet holden before me this — day of _____, by the oaths of twelve honest and lawful men of the manor aforesaid, presented for her being a common scold at the parish aforesaid, in the county aforesaid, within the jurisdiction of the said court, as well with her neighbours, as with other the liege people of our Lord the King, whereby they are much molested, disquieted, and grieved, and against the peace of his Majesty, his crown and dignity: These are therefore to command you to cause the said C. F. to appear at the next court leet to be holden in and for the said manor, at _____ aforesaid, in the county aforesaid, to answer the premises; and further to do and receive as the same court shall consider of her in that behalf; and have you there this precept. Given under my hand and seal, the — day of _____, in the — year of the reign of our Sovereign Lord George the Fourth, by the grace of God of the united kingdom of Great Britain and Ireland, King, defender of the faith. And in the year of our Lord _____

J. S. steward. (L. S.)

EXTRACTS

FROM

ACTS OF PARLIAMENT,

*Connected with the Jurisdiction of Courts Baron and
Courts Leet.*

STAT. MARLEBRIDGE (52 H. 3. c. 9).

*“ Who shall do Suit of Court: Suit of Court by
Coparceners.*

S. 1. “ For doing suits unto courts of great lords, or of meaner persons, from henceforth this order shall be observed, that none that is infeoffed by deed, from henceforth shall be distrained to do such suit to the court of his lord, without he be specially bound thereto by the form of his deed : — these only except whose ancestors, or they themselves, have used to do such suit before the first voyage of the said King Henry into Britain, sithence which nine and thirty years and an half are passed, unto the time that these statutes were enacted. Likewise from henceforth none that is infeoffed without deed, from the time of the Conquest, or any other ancient feoffment, shall be distrained to do such suits, unless that he or his ancestors used to do it before the said voyage. And they that are infeoffed by deed to do a certain service, as, for service of so many shillings by year, to be acquitted of all service, from henceforth shall not be bounden to such suits, or other like, contrary unto the form of their feoff-

ment. And if any inheritance whereof but one suit is due, descend unto many heirs, *as unto parceners*, whoso hath the eldest part of the inheritance, shall do that one suit for himself and his fellows, and the other coheirs shall be contributaries, according to their portion, for doing such suit. And if many feoffees be seized of an inheritance, whereof but one suit is due, the lord of the fee shall have but that one suit; and shall not exact of the said inheritance but that one suit, as hath been used to be done before. And if those feoffees have no warrant or mean which ought to acquit them, then all the feoffees, according to their portion, shall be contributaries for doing the suit for them. And if it chance that the lords of the fee do distrain their tenants for such suits, contrary to this act, then, at the complaint of the tenants, the lords shall be attached to appear in the King's Court at a short day, to make answer thereto, and shall have but one essoin therein, if they be within the realm; and immediately the beasts, or other distresses taken by this occasion, shall be delivered to the plaintiff, and so shall remain, until the plea betwixt them be determined." [The lords' attendance compellable by further attachment, and in case of further default, then by distress of their goods and chattels.]

1 & 2 PH. & MARY, c. 12.

"An Act for the impounding of Distresses."

S. 1. "For the avoiding of grievous vexations, exactions, troubles and disorder in taking of distresses, and impounding of cattle: Be it enacted by the authority of this present parliament, that from and after the first day of April next coming, no distress of cattle shall be driven out of the hundred, rape, wapentake, or lathe where such

distress is or shall be taken, except that it be to a pound overt within the same shire, not above three miles distant from the place where the said distress is taken: And that no cattle or other goods distrained or taken by way of distress for any manner of cause at one time, shall be impounded in several places, whereby the owner or owners of such distress shall be constrained to sue several replevies for the delivery of the said distress so taken at one time; upon pain every person offending contrary to this act, shall forfeit to the party grieved, for every such offence, an hundred shillings, and treble damages."

S. 2. "And be it further enacted by the authority aforesaid, that after the said first day of April, no person or persons shall take for keeping in pound, impounding or poundage of any manner of distress, above the sum of four-pence for any one whole distress that shall be so impounded; and where less hath been used, there to take less; upon the pain of five pounds, to be paid to the party grieved over and beside such money as he shall take above the sum of four-pence; any usage or prescription to the contrary in anywise notwithstanding."

1 [2] JAC. 1. c. 5.

"An Act to prevent the overcharge of the people by Stewards of Court Leets and Court Barons."

"Whereas the King's most excellent Majesty, the Lords spiritual and temporal, and other his Highness' subjects of this realm of England and Wales, have in divers places of the same many franchises, jurisdictions, privileges and liberties to keep court leets, or court barons, for the true administration of justice, and to the punishing and suppressing of offences; the profits and

perquisites of which courts have heretofore been used to be levied and collected by the bailiff or other minister of such court, and by him accounted for to his Highness' progenitors, or other lords or ladies of such courts and manors, and as of right it ought so to be: But now by reason of the great increase of people, the said profits and perquisites of courts are grown to be of a better yearly value, than in ancient time it hath been; divers that are now stewards of such courts have heretofore in their own names, or in the names of some other to their use, obtained and gotten divers grants of all the profits and perquisites of such courts whereof they are stewards, whereby many of his Majesty's subjects are unjustly vexed, and by grievous fines and amerciaments unduly punished, greatly to the wronging and impoverishing of the tenants and inhabitants where such stewards are, proceeding out of a greedy desire to make and obtain an undue and extraordinary gain to themselves: It is therefore by the authority of this present parliament established and enacted, that no steward, deputy steward, or other under steward of any the courts aforesaid, shall directly or indirectly, in his own name, or in the name of any other, from and after the expiration of one year next after the end of this session of this present parliament, take, receive, or make benefit to his own use, in money, goods, or any other thing, to the value of twelve pence or more, by virtue or colour of any demise or grant hereafter to be made of any of the profits or perquisites, or amerciaments of any such courts whereof they are steward, which rightfully shall belong to the lords of the same, upon pain that every steward offending contrary to the tenor of this present act of parliament, shall for every such his offence forfeit the sum of forty pounds, and to be disabled ever after to be steward of such court, or of any other; the one half of the forfeiture to be to our Sovereign Lord the King's Majesty, his heirs and successors; the

other half to any of his Majesty's subjects that shall complain in any of his Highness' courts of record, by action of debt, bill, plaint, or information, in which suit no estoppel, protection, wager of law, or other dilatory plea shall be allowed."

4 ED. IV. c. 1. (210)

[*The Length and Breadth of Cloths made to be sold.
No Cloths wrought beyond Sea shall be brought into
England.*

S. 6. That every justice of peace [&c. &c.], and every steward keeping or holding wapentake or leet of any person out of city, borough, or town, where no mayor, master, bailiff or bailiffs, or portreves is or be, shall have power or authority, by this ordinance, to hear and determine the complaints of every such clothmaker and labourer, as well for nonpayment of the said labourer's wages as of the said forfeiture and damages, by due examination of the parties in this behalf; and thereupon for nonpayment of the said duties and forfeitures, and for the said damages, to commit the said offenders in this behalf to the next gaol within the same county, there to remain till the said duties, forfeitures, and damages be fully paid to the said labourer or clothmaker; and also that every [of the said justices of peace, &c.] steward of wapentake and leet, upon information or complaint of any other person which is not grieved in this behalf, shall have power by the said authority within his jurisdiction, to cause the party to come before him, against whom such information or complaint shall be made, for offending this ordinance, and to examine him in and upon the

(210) See the reference to this and the 13 following statutes or ordinances, *ante*, pt. 3. pa. 835, n.

matter contained in the same information or complaint; and if the party by examination or other due proofs, be found guilty or defective, that then the same party, as often and for every time that he is so found guilty or defective, shall forfeit to the king, or to such person or persons who is or be entitled to have fines or amerciaments for offences done within their jurisdiction, three shillings and four-pence. And that every of the said justices of peace and other officers aforesaid, within his jurisdiction, upon every of the said informations or complaints, shall have full power to make like process against the party, upon whom any such information or complaint, as before is rehearsed, shall be made, to make him personally to appear before him, thereupon to be examined, as justices of peace have upon information or complaint made to them for surety of peace, without any fee or reward to be taken or had by any of the said justices, or any other officer, for the execution of their offices in this behalf.]

14 & 15 HEN. VIII. c. 10.

[*The Penalty for unlawful hunting the Hare.*

Be it enacted &c. that no person from henceforth race, destroy, and kill any hare in the snow with any dog, bitch, bow, nor otherwise. And that the justices of peace within every shire, of every sessions of the peace, and stewards of leets, shall have full authority and power to enquire of such offenders; and after such inquisitions found, the said justices of peace and stewards of leets, for every hare so killed, shall cess upon every such offender six shillings and eight-pence, to be forfeited to the King, when found by such justices of the peace, and the forfeiture found in every leet, to be to the lord of the leet.]

32 HEN. 8. c. 13.

[The Bill for the Breed of Horses.]

S. 2. That no commoner within any forest, chase, moor, marsh, heath, common, or waste ground, nor officer of the said forests or chases, nor any other person after &c. shall have or put to pasture into or upon any such forest &c. any stoned horse, being above the age of two years, and not being of the height of fifteen handfuls, to be measured from the lowest part of the hoof of the fore foot, unto the highest part of the wither, and every handful to contain four inches of the standard, to pasture, feed, or be in or upon any of the said forests &c. within any of the shires and territories of Norfolk, Suffolk, Cambridge, Buckingham, Huntingdon, Essex, Kent, South Hampshire, North Wiltshire, Oxford, Berkshire, Worcester, Gloucester, Somerset, North Wales, South Wales, Bedford, Warwick, Northampton, Yorkshire, Cheshire, Staffordshire, the county of the city of York, the town and liberties of Gloucester, the county of the town of Kingston-upon-Hull, the county palatine of Lancaster, the counties of Salop, Leicester, Hereford, and Lincoln; nor shall put to feed or pasture any stoned horse being above the said age of two years, and not being of the height of fourteen handfuls, to be measured as abovesaid, within or upon any like ground lying or being within any other shire of this realm, upon pain of forfeiture of the said horse or horses which shall be so found in or upon any such ground, forest, &c. (By 8 Eliz. c. 8. s. 2 & 3. such horses in the Isle of Ely, and the counties of Cambridge, Huntingdon, Northampton, Lincoln, Norfolk, and Suffolk, need only be of the height of thirteen handfuls.)

S. 8. That the justices of peace &c., and all stewards of leets and law-days, in the same leets and law-days shall have authority by this act to inquire of all defaults, contempts, omissions, and offences contrary to the effects above written; and all presentments thereof to be found in any of the said leets or law-days, shall be certified by the steward or deputy steward, or court-holder of the same leet or law-day, in the next general sessions of the peace to be holden &c., or unto the *custos rotulorum* of the same shire, within forty days next after that presentment made, which justices of the peace shall have power to hear and determine, &c.; and if any such steward, deputy steward, or court-holder embezzle or conceal any such presentment, or do not certify the same as is aforewritten, every of them so offending shall forfeit and lose for every such offence forty shillings (half to the King, and half to the person suing, &c.)

S. 9. That no person after &c. shall have or put to pasture any horse, gelding, or mare, infect with scab or mange in, to, or upon any of the said forests, &c. upon pain to forfeit for every horse, &c. ten shillings, which offence shall be inquirable and presentable before the steward in every leet, as other common annoyances be; and the forfeiture thereof to be to the lord of the leet.]

33 HEN. VIII. c. 6.

[*The Bill for Cross Bows and Hand Guns.*

That it shall be lawful to all stewards and bailiffs in their several leets and law-days, to inquire, hear, and determine every such offence, to be committed and done contrary to the tenor of this act; so that always no less fine than ten pounds be assessed upon every such presentment and conviction, the one moiety of such fine to be to

the King, and the other moiety, the one half to the owner of the leet, and the other to the party that will sue for the same.]

83 HEN. VIII. c. 9.

[The Bill for the maintaining Artillery, and the debarring of unlawful Games.

S. 10. Aliens not to use long bows without the King's license; and that justices of assise, &c. and of the peace, and stewards of franchises, leets and law-days, have power to enquire of all the premises in their sessions, leets and law-days, and hear and determine the same; and also by their discretion examine all persons lacking, and not having bows, shafts, and arrows according to the form therein aforesaid.

S. 18. That where any such forfeitures shall happen to be found within the precinct of any franchise, leet or law-day, then the lord of the same franchise, leet or law-day to have the one moiety thereof, the other moiety to the person suing for the same.]

2 & 3 ED. VI. c. 10.

[The Bill for true making of Malt.

S. 4. That justices of peace in their sessions, and the steward in every leet, shall have full power and authority to enquire, hear, and determine, as well by presentment of twelve men, as by accusation or information of two honest witnesses, of, for, and upon all the offences and forfeitures aforesaid, as well for the King as for the party that shall sue, procure, or cause the same to be presented.]

2 & 3 ED. 6. c. 15.

[The Bill of Conspiracies of Victuallers and Craftsmen.]

S. 3. That all justices of assise, justices of peace, mayors, bailiffs, and stewards of leets, at all and every their sessions, leets, and courts, shall have full power and authority to enquire, hear, and determine all offences committed against this statute, and to punish or cause to be punished the offender, according to the tenor of this statute.]

7 ED. 6. c. 5.

[The Act to avoid the excessive prices of Wine.]

S. 6. That justices of peace in their several sessions, and the steward in every leet, and the sheriff in his tourn, and every escheator, shall have full power and authority to enquire, by the oaths of twelve lawful men, of all offences perpetrated or done contrary to the form of this act.]

2 & 3 P. & M. c. 8.

[The Statute for the Mending of Highways.]

S. 2. That the steward of every leet or law-day shall therein have full power and authority to inquire, by the oaths of the suitors, of all the offences that shall be committed within the leet or law-day, against every point and article of this statute, and to assess such reasonable fines and amerciaments for the same, as shall be thought meet by the said steward. And the steward of every leet and law-day shall make estreats (for which, by S. 4. his fee to be 12*d.*) indented of all the fines, forfeitures, and amerciaments, for the defaults presented before him; and shall deliver the one part thereof, sealed and signed by him, to the bailiff and high constable of every hundred, rape,

lathe, or wapentake, wherein the defaults shall be presented, and the other part to the constable and churchwardens of the parish wherein the defaults were made, the same to be yearly delivered within six weeks after the feast of Saint Michael the Archangel.]

4 & 5 P. & M. c. 3.

[An Act for the taking of Musters.

That all stewards of leets, law-days, and liberties, at their leets and law-days, shall inquire, hear, and determine every of the offences committed or done contrary to this act, within the precincts of their leet or liberty.]

18 ELIZ. c. 10.

[An Act of addition unto the former Acts for amending and repairing of Highways.

That stewards of leets and law-days, in their leets and law-days, shall hear and determine every offence, matter, and cause, that shall grow, come, or arise, by reason of this statute.]

23 ELIZ. c. 10.

[An Act for the Preservation of Pheasants and Partridges.

S. 5. That justices of assize in their circuits, justices of the peace in their sessions, and stewards of leets, liberties, and law-days, within their several jurisdictions, shall and may, by virtue hereof, hear, enquire, and determine, of all offences which shall be committed within the precinct of their liberties, jurisdictions, or franchises, against the tenor of this act.]

1 [2] JAC. 1. c. 22.

[*An Act concerning Tanners, Carriers, Shoemakers, &c.*

S. 32, 34-5. Mayors, bailiffs, &c. and lords of liberties out of the circuit of three miles of the City of London (211), to appoint leather sealers, and triers of tanned leather, under a penalty.

S. 50. That all justices of assise and gaol delivery, justices of peace, and stewards of franchises, leets and law-days, within their several precincts, jurisdictions, and liberties, mayors, &c. shall enquire of all the premises in their sessions, leet or law-day, and hear or determine the same, and also by their discretions examine all persons suspected to offend this act.

S. 51. The steward of any manor, liberty, or franchise, immediately belonging to the King, shall have the like authorities, and bear the like penalties as the lords of liberties.] (212).

21 JAC. 1. c. 21.

[*An Act concerning Hostlers and Innholders.*

S. 2. No hostler or innholder shall make horse bread in his hostrey, nor without, but bakers shall make it, and the assize shall be kept, and that the weight be reasonable after the price of the corn and grain in the markets adjoining; and the hostlers or innholders shall sell their horse bread, and their hay, oats, beans, peas, provender, and also all kind of victual both for man and beast, for reasonable gain, having respect to the prices for which they

(211) See 1 Burr. 497-8.

by subsequent statutes; but re-

(212) Continued and amended

pealed by 48 Geo. 3. c. 60.

shall be sold in the markets adjoining, without taking any thing for litter.

S. 3. It shall be lawful for every hostler and inn-keeper, dwelling in any town or village, being a thoroughfare, or a common passage, and being no city, town corporate, or market town, wherein any common baker-exercising the occupation of baking, and that hath been apprentice at the said occupation by the space of seven years, is dwelling, to make within his house horse bread sufficient, lawful, and of due assize, according as the price of grain and corn shall be.

S. 4. If the horse bread which any of the said hostlers or innholders shall make, be not sufficient, lawful, and of due assize, according to the price of grain and corn as aforesaid; or if any of them shall offend in any thing contrary to this act; then the justices of assize, &c. justices of the peace, sheriffs in their tourns, and stewards in their leets and law-days, shall have full power and authority to enquire, hear, and determine the said defaults and offences of the said hostlers and innholders. And the hostler or innholder for the first offence shall be fined according to the quantity of the offence; and if, being once convicted, he shall again offend, for the second offence he shall be imprisoned for the space of one month; and if he shall a third time offend, being thereof convicted, he shall stand upon the pillory: and if he shall offend after the judgment of the pillory given, he shall be forejudged for keeping an inn again. (And see 32 H. 8. c. 41, repealed by this act.) (213)]

(213) N.B. The powers of the above acts are expressly confined to the steward, as far as respects the jurisdiction given to the court leet. But by the act of 31 Eliz. c. 7. "Against the erecting and maintain-

1 ELIZ. c. 17.

"An Act for Preservation of Spawn and Fry of Fish."

"For the preservation hereafter of spawn, fry, and young breed of eels, salmons, pikes, and of all other fish, which heretofore hath been much destroyed in rivers and streames, salt and fresh, within this realm, insomuch that in divers places they feed swine and dogs with the fry and spawn of fish, and otherwise, lamentable and horrible to be reported, destroy the same, to the great hindrance and decay of the commonwealth: Be it therefore enacted by," &c. "That no person or persons of what estate, degree, or condition soever he or they be,

ing of cottages." It is enacted [s. 6.] that after the feast of All Saints then next coming, there should not be any inmate or more families or household than one, dwelling or inhabiting in any one cottage, upon pain that every owner or occupier of any such cottage, should forfeit to the lord of the leet, within which such cottage should be, the sum of 10s. for every month, that any such inmate or other family than one should dwell or inhabit in any one cottage as aforesaid: "And that all and every lord and lords of leet and leets, and their stewards, within the precinct of his and their leet and leets, shall have full power and authority within their several leets to enquire, and to take presentment by the oath of jurors, of all and every offence and offences in this behalf; and upon such presentment had or

made, to levy by distress to the use of the lord of the leet, all such sums of money as so shall be forfeited: And moreover, that it shall be lawful for the lord of every such leet, where such presentment shall be made, to recover to his own use any such forfeiture, by action of debt, in any of the Queen's Majesty's courts of record, wherein no essoin, protection or wager of law shall be allowed." And see s. 3. of the same act, against erecting cottages on waste, by which lords of leet are authorised to enquire of the offence.

[Vide also s. 8. of the 1 Eliz. c. 17, ante, pt. 3. pa. 830, which authorises the lord of every leet to enquire of the offences mentioned in that statute, according to the usual course of amercements or other things enquirable in the court leet.]

from and after the first day of June next coming, with any manner of net, weele, but, taining kepper line, crele, raw, fagnet, trolnet, trimenet, trimboat, stalboat, web-lister, seur, lammet, or with any device or engine made of hair, wool, line or canvas; or shall use any heling-net or trimboat, or by any other device, engine, cawtel, ways or means whatsoever heretofore made or devised, or hereafter to be made or devised, shall take and kill any young brood, spawn, or fry of eels, salmon, pike, or pikerel, or of any other fish, in any floodgate, pipe, at the tail of any mill, wear, or in any straits, streams, brooks, rivers, fresh or salt, within this realm of England, Wales, Berwick, or the marches thereof; nor shall from and after the first day of June next coming, by any of the ways and means aforesaid, or otherwise in any river or place above specified, take and kill any salmons or trouts not being in season, being kepper-salmons or kepper-trouts, shedder-salmons or shedder-trouts."

S. 2. " And be it further enacted by the authority aforesaid, That no person or persons, of what estate, degree or condition he or they shall be of, from and after the said first day of June, by any of the means aforesaid, in any of the rivers or places above named, shall take and kill any pike or pikerel, not being in length ten inches or more; nor any salmon not being in length sixteen inches or more; nor any trout not being in length eight inches or more; nor any barbel not being in length twelve inches or more."

S. 3. " And to the intent the said young fry, brood, or spawn, may be preserved according to the true meaning hereof, be it further enacted by the authority aforesaid, That no manner of person or persons, from and after the first day of June next coming, shall fish or take fish with any manner of net, tramel, kepe, wore, hivie,

crele, or by any other engine, device, ways or means whatsoever, in any river or other place above mentioned, but only with net or trammel, whereof every mesh or mask shall be two inches and a half broad; angling excepted."

S. 4. " Provided nevertheless, and be it enacted by authority aforesaid, That in all such places where smelts, loches, minnies, bulheads, gudgions, or eels, have been used to be taken and killed, that in all such places it shall be lawful only for the taking of smelts, loches, minnies, gudgions and eels, to use such nets, lepes and other engines, devices, ways and means, as heretofore have been used for the taking of the same; so that such person or persons using or occupying such nets or other engines as is last aforementioned, do not take, kill or destroy any other fish with the said nets or engines, contrary to the tenor and form above in this statute contained."

S. 5. " And be it further enacted, that if any person or persons, after the aforesaid day limited in this present act, offend in any of the points before rehearsed, contrary to the tenor, form, and purport of any part of the same, that then every such person and persons so offending shall lose and forfeit for every time of his or their offence, the sum of twenty shillings, and the fish so taken contrary to the tenor hereof, and also the unlawful nets, engines, devices and instruments, whatsoever they be, wherewith or whereby such offence shall fortune to be made, committed or done.

S. 6. " And to the intent that a perfect execution may be had of this present act, be it further ordained by authority aforesaid, That the Lord Admiral of England, and the Mayor of the City of London, for the time being, and all and every other person and persons, bodies politick and corporate, which by grant or other lawful ways

or means, lawfully have or ought to have any conservation or preservation of any rivers, streams or water, or punishments and corrections of offences committed in any of them, shall have full power and authority by virtue of this act to enquire of all the offences to be committed and done contrary to the effect and true meaning of this act, within his or their such lawful rule, government, jurisdiction, and conservancy, by the oaths of twelve men or more, and to hear and determine all and every the same offences committed within his or their such jurisdiction, conservancy, rule and government."

S. 7. "And that all such pains, and forfeitures as shall rise and grow by the reason of any such conviction for any the offences aforesaid, shall be to the use of every of the said person and persons being no body politick or corporate, nor head of any body politick or corporate, before whom such conviction, as is aforesaid, shall be had, and to the use of every such body politick and corporate as heretofore have lawfully had any fines, forfeitures and amerciaments for any offence unlawfully committed or done in any such their jurisdiction or conservancies, upon conviction had before the head of any such body politick or corporate."

S. 8. "And that also the lord of every leet within this Realm of England and Wales, or the dominions of the same, shall have full power and authority to enquire of all the offences contrary to the purport, tenor and form of this estatute, within the precinct of their said leet: such enquiry to be had in manner and form, and after such sort, as common amerciaments, or other things inquirable in their court leet, have been lawfully used and accustomed to be had and made."

S. 9. "And that upon every such presentment had in any court or leet, by the oath of twelve men or more, as

is aforesaid, of any offence or offences made contrary to the tenor of this estatute: that then all such forfeiture above in this estatute limited and appointed for such offence, shall be unto the lord of the said leet for the time being, to his own use for ever, and shall be levied in such manner and form, as amerciaments for affrays committed within the precinct of such leet have been used and accustomed to be levied."

S. 10. "And if any leet after the said first day of June be kept within this realm of England or Wales, or the dominions thereof, and the steward of the said leet for the time being, or other for him, do not charge the jury sworn in such leet, to enquire of all the offences done within the precinct of the said leet, contrary to the tenor and form of this estatute; that then the steward of the said leet to lose and forfeit forty shillings; the one moiety of which forfeitures shall be to the Queen's Majesty, her heirs and successors, and the other moiety to him that will sue for the same. And if any jury, sworn in any leet, and being charged to enquire of the offences committed within the precinct of that leet, do wilfully and willingly conceal and make default in presentment, or do not present the offence and offenders; that then it shall be lawful to the steward or bailiff of the leet, or his or their deputy for the time being, to impanel one other jury within the said leet, and to enquire of such concealment, default or non-presentment; and that upon such concealment, default or non-presentment, found and presented, every of the said jurors which so did conceal, make default or not present, shall lose and forfeit for every such offence twenty shillings to the lord of the said leet, the same to be levied in manner and form as is above said for the other offences limited and expressed."

S. 11. "And it is further enacted by authority afore-

said, That if the offences above-mentioned touching the taking, killing or destroying of fish, or fry and spawn, be not presented at the leet where they shall be committed, within one year next after the offence committed, that the justices of peace in their sessions, justices of oyer and determiner, and justices of assise in their several circuits, shall have full power and authority to enquire thereof, and to hear and determine all the offences committed contrary to the tenor of this estatute."

S. 12. "Saving always to all and every person or persons, bodies politick and corporate, and every of them, all such right, title, interest, claim, privilege, and conservation, and enquiry, and punishment of and for any the offences aforesaid, as they or any of them lawfully have and enjoy, or of right to have and enjoy by any manner of means; any thing in this act to the contrary notwithstanding. This act to endure to the end of the next Parliament."

S. 13. "Provided always, that this act, nor any thing therein contained, shall not extend unto the fishing of the river or water of Tweed; nor to any river or water whereof the Queen's Majesty is answered of any yearly rent or profit; nor to the owners, farmers and occupiers of the rivers Uske or Wye in the county of Monmouth: for any fish hereafter to be taken in any the rivers or waters before mentioned and expressed; but that it shall be lawful at all seasonable time and times hereafter, for such as have or shall have any manner of interest therein, to take and fish the said rivers and waters, in such manner and form as heretofore hath been used and accustomed, not using any net or engine, to the intent willingly to take, kill, and destroy the spawn, breed or fry, breeding any kind of fish within the said several rivers or waters; this act, or any thing therein mentioned or contained to

the contrary notwithstanding." [Continued by 2 Jac. 1. c. 25: Made perpetual, except as to the last sect. by 3 Car. 1. c. 4.]

9 HEN. 8. c. 17.

" Holding Pleas of the Crown."

" No sheriff, constable, escheator, coroner, nor any other *our* bailiffs, shall hold pleas of our crown."

1 ED. 4. c. 2.

" Justices of Peace may award Process upon Indictments taken in 'Sheriff's' tourns."

" Also whereas many of the King's faithful liege people, as well spiritual as temporal, by the inordinate and infinite indictments and presentments, as well of felony, trespasses, and offences, as of other things, which of long time have been had and used within the counties of this realm, and taken before sheriffs for the time being in their counties severally, under sheriffs, their clerks, bailiffs, and ministers, at their tourns or law-days, holden before them severally in the counties, which indictments and presentments be oftentimes affirmed by jurors having no conscience, nor any freehold, and little goods, and often by the said sheriff's menial servants and bailiffs, and their under sheriffs, by which indictments and presentments the said lawful liege people be attached and arrested by their bodies, and put in prison, by the said sheriffs, under sheriffs, their clerks, bailiffs, and ministers, to the great loss of their goods; and they so being in prison by the said sheriffs, under sheriffs, their clerks, bailiffs, and their ministers are constrained to make grievous fines and

ransoms, and levy of them great fines and amerciaments for the said indictments and presentments, in great hindrance and utter undoing of the said liege people; after which fines, ransoms, and amerciaments, so rated and levied by the said sheriffs, under sheriffs, clerks, bailiffs, and their ministers, the people aforesaid be enlarged out of prison, and the said indictments and presentments be imbezelled and withdrawn: Our said Lord the King considering the premises by the advice &c., hath ordained and established, that all manner of indictments and presentments that shall be taken hereafter before any of his said sheriffs of his counties for the time being, their under sheriffs, clerks, bailiffs, or ministers, at their tourns or law-days before mentioned, they nor any of them shall have power or authority to attach, arrest, or put in prison, or to levy any fines or amerciaments of any person or persons so indicted or presented, by reason or colour of any such indictment or presentment taken or to be taken before them or any of them, nor to make or take of any such person or persons so indicted or presented, any fine or ransom, but that the said sheriffs, and their under sheriffs, clerks, or bailiffs, and their ministers, shall bring, present, and deliver all such indictments and presentments taken before them, or any of them, in their tourns or law-days aforesaid, to the justices of peace, at their next sessions of the peace that shall be holden in the county or counties where such indictments or presentments shall be taken before the said justices of such county or counties for the time being: And if any of the said sheriffs, under sheriffs, clerks, bailiffs, and their ministers, do not bring, deliver, and present all such indictments or presentments so taken before them and every of them in their tourns or law-days, as before is recited, at such sessions of the peace, before the said justices of peace, that then all such

sheriffs, under sheriffs, clerks, bailiffs, and their ministers, and every of them that so shall fail in bringing, delivering, and presenting of such indictments or presentments, shall forfeit to the King forty pounds at every time that they or any of them doth the contrary: And that the said justices of peace shall have power and authority to award process upon all such indictments and presentments, as the law doth require, and in like form, as if the said indictments and presentments were taken before the said justices of peace in the said county or counties, and also to arraign and deliver all such person or persons so indicted and presented before the said sheriffs, under sheriffs, their clerks, bailiffs and their ministers, or any of them in their tourns or law-days: And all such persons or person which be indicted or presented of trespass, shall make such a fine as shall seem lawful by their discretions: And the estreats of the said fines and amerciaments shall be inrolled, and by indenture be delivered to the said sheriffs, under sheriffs, their clerks, bailiffs, or ministers, or some of them to the use and profit of him that was sheriff in the said counties or county, at the time of such indictments or presentments taken. And if any of the said sheriffs, their under sheriffs, clerks, bailiffs, or ministers, do arrest, attach, or put in prison, or cause any fine or ransom to be taken, or levy any amerciament of any person or persons so indicted or presented, by reason or colour of any such indictment or presentment taken before them at their tourns or law-days above rehearsed, before that they have process from the said justices of peace, or estreats delivered out of the said indictments or presentments so brought, delivered, and presented to them, that then the sheriffs which so do, shall forfeit an hundred pounds, the one half thereof to be employed to the

expences of the King's House, and the other half to the party or parties which be or is indamaged, and he or they shall have therefore an action of debt at the common law, and like process as in an action of debt at the common law. And that the defendant or defendants in such suits or actions of debt, shall not be essoined, nor wage their law, and if he or they, or any of them against whom this action shall be taken, do offer or cast any protection, or other impediment, in retardation of the said suits or actions, that shall not be allowed unto him."

S. 2. " Provided always, that this present ordinance do not extend, nor in any wise be prejudicial to the Sheriffs of the city of London, now being, or which at any time hereafter shall be, concerning any indictments or presentments to be taken within the said city of London."

S. 3. " Provided also that this act extend not, nor be prejudicial to any person or persons which hath grants of any fines or amerciaments by any letters patents of our said Sovereign Lord the King, or of any of his progenitors or predecessors, bearing date before the 10th day of December next after the beginning of this Parliament; and that this Act and ordinance do not extend, nor be prejudicial, to any person or persons having any liberties or franchises by any of the said letters patents, or in any other manner by prescription. And that this ordinance be in his force, and begin to take effect at the fortieth day next after the sixth day of May next, after the beginning of this present Parliament, upon the which sixth day the said Parliament was dissolved."

STAT. OF WINCHESTER, (13 ED. I. Stat. 2. c. 6.)

"That View of Arms be made. Hue and Cry shall be followed. Fairs or Markets shall not be kept in Church-Yards."

It is commanded "That view of armor be made every year two times. And in every hundred and franchise *two constables* shall be chosen to make the view of armor: and the constables aforesaid shall present before justices assigned, such defaults as they do see in the country about armor, and of the suits of towns, and of highways, and also shall present all such as do lodge strangers in uplandish towns, for whom they will not answer; and the justices assigned shall present at every Parliament unto the King such defaults as they shall find, and the King shall provide remedy therein. And from henceforth let sheriffs take good heed, and bailiffs within their franchises and without, be they higher or lower, that have any bailiwick or forrestry in fee, or otherwise, that they shall follow the cry with the country, and after, as they are bounden, to keep horses and armor, or so to do; and if there be any that do not, the defaults shall be presented by the constables to the justices assigned, and after by them to the King, and the King will provide remedy as afore is said. And the King commandeth and forbiddeth, that from henceforth, neither fairs nor markets be kept in church-yards, for the honour of the church."

13 & 14 CAR. II. c. 12.

"An Act for the better relief of the Poor of this Kingdom."

S. 15. "And whereas the laws and statutes for the ap-

prehending of rogues and vagabonds, have not been duly executed, sometimes for want of officers, *by reason lords of manors do not keep court leets every year for the making of them:* Be it therefore enacted by the authority aforesaid, That in case any *constable, headborough or tithing-man* shall die or go out of the parish, any two justices of the peace may make and swear a *new constable, headborough or tithing-man, until the said lord shall hold a court, or until next quarter sessions, who shall approve of the said officers so made and sworn as aforesaid, or appoint others as they shall think fit:* And if any officer shall continue above a year in his or their office, that then in such case the justices of peace in their quarter sessions may discharge such officers, and may put another fit person in his or their place until the lord of the said manor shall hold a court as aforesaid."

11 Geo. I. c. 4.

"An Act for preventing the inconveniencies arising for want of elections of mayors or other chief magistrates of boroughs or corporations, &c."

S. 3. "And whereas in certain boroughs and towns corporate within that part of Great Britain called England, Wales, and Berwick upon Tweed, the mayor, bailiff or bailiffs, or other chief officer or officers, is or are to be nominated, elected or sworn at a *court leet or view of frankpledge, or some other court, and by reason of the contrivances or default of the lord or his steward, or such other officer by or before whom such court ought to be held, in not holding the same, or by some accident, it hath happened and may hereafter happen, that no due nomination, election, or swearing of such mayor, bailiff or bailiffs, or other chief officer or officers, hath been or shall be had or made:* Be

it further enacted by the authority aforesaid, that in every such case it shall and may be lawful to and for his Majesty's Court of King's Bench, upon motion to be made in the said court, to award a writ of *mandamus*, requiring the lord or his steward or other officer, by or before whom such court ought to be held, to hold or cause to be holden such court leet or other court, and to do every other act necessary to be done by him in order to such nomination, election, or swearing, at such day and time as shall be for that purpose judged proper by the said court of King's Bench, and shall be appointed in such writ, or to signify to the said court good cause to the contrary, and thereupon to cause such proceedings to be had and made, as in other cases of writs of *mandamus* granted by the said court, for holding of any court, and of the day and time appointed in and by any such writ of *mandamus* for holding such court, public notice in writing shall, by such person as the said court of King's Bench shall appoint, be affixed in the market place, or some other publick place within such borough, or town corporate, by the space of six days before the day so appointed: And where a nomination of persons in order to the election of any such mayor, bailiff or bailiffs, or other chief officer or officers, is to be made at such court leet, or other court, in every such case, after such nomination made, all and every other act and acts necessary to be done in order to such election, shall be had, made and done at such assembly, and in such manner and form as the same ought to have been had, made and done, in case such election had been made upon the day next after the expiration of the time prescribed for such election by the charter or usage of such borough or corporation, according to the directions hereinbefore mentioned."

S. 4. "And be it further enacted by the authority

aforesaid, That the mayor, bailiff or bailiffs, or other chief officer or officers, who shall be elected pursuant to the directions of this act, shall take the oath or oaths by law required at the time of his admission into such office, before such officer as shall preside at such election, in pursuance of this act, who is hereby authorised and required to administer such oath or oaths; and shall have the same privileges, precedence, powers and authorities in all respects, as any mayor, bailiff or bailiffs, or other chief officer or officers of the same city, borough, or corporation, elected on the days or times fixed by charter or usage for that purpose, ought to have or enjoy."

S. 5. "Provided always, That no such election, nor any act done in order thereunto, shall be valid, unless as great a number of persons, having right to be present at and vote therein, shall be present at the assembly holden for such purpose, and concur therein, as would respectively have been necessary to be present, and concur in such election or act, in case the same had been made or done upon the day or within the time appointed for that purpose by the charter or usage of such city, borough, or corporation, saving only, that the presence of the mayor, bailiff or bailiffs, or other chief officer or officers who ought to preside, shall not be necessary."



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1 B. d. d. 7. 7. 7.

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*1 B. & M. 736.
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- 1 R. 3. c. 4. Of what credit and estate those jurors must be which shall be impanelled in the sheriff's turn - - -
- 1 Ed. 6. c. 14. The act for chantries collegiate
- 2d. & 3rd. Ed. 6. c. 8. An act for finding of office before escheators - - -
- 5 Eliz. c. 14. An act against forgers of false deeds and writings - - -
- 13 Eliz. c. 5. An act against fraudulent deeds alienations, &c. - - -
- 13 Eliz. c. 7. An act touching orders for bankrupts - - -
- 1 Jac. 1. c. 15. An act for the better relief of creditors against such as shall become bankrupts - - -
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- 7 Jac. 1. c. 21. An act for confirmation of decrees thereafter to be made in the Exchequer Chamber & Duchy court, concerning copyhold lands; [and see extract from this act, 7 East 481 n.] - cclx
- 21 Jac. 1. c. 15. Act to enable judges & justices of the peace to give restitution of possession in certain cases. [See 3 Hen. 6. c. 9. 31 Eliz. c. 11] - cclxi
- 9 Car. 2. c. 6. An act for the redress of inconveniences by want of proof of the deceases of persons beyond the seas, or absenting themselves, upon whose lives estates do depend. [See also, 6 Anne, c. 18.] - cclxii
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- 31 G. 2. c. 14. An act for further explaining the laws touching the electors of knights of the shire to serve in parliament for that part of Great Britain called England - - cclxxx
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- 42 Geo. 3. c. 116. An act for consolidating the provisions of the several acts passed for the redemption and sale of the land tax, into one act, and for making further provision for the redemption and sale thereof, and for removing doubts respecting the right of persons claiming to vote at elections for knights of the shire and other members to serve in parliament in respect of messuage lands, or tenements, the land tax upon which shall have been redeemed or purchased
- 53 Geo. 3. c. 123. An act to amend and render more effectual several acts passed for the redemption and sale of the land tax
- 53 G. 3. c. 142. An act to explain and amend several acts relative to the land tax [*and reference to 43 Geo. 3. c. 99. s. 52.*] -
- 43 Geo. 3. c. 75. An act to authorise the sale mortgage of the estates of persons found lunatic by inquisition in England or Ireland respectively, and the granting of leases the same - - -
- 47 Geo. 3. sess. 2. c. 8. An act concerning common recoveries suffered in copyhold or customary courts by attorney - -
- 59 Geo. 3. c. 80. An act concerning common recoveries to be suffered by attorney in court of ancient demesne, and to explain an act of his present Majesty, relative to the sale or mortgaging of estates of lunatics
- Stamp act 48 Geo. 3. c. 149. - - -
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55 G. 3. c. 147. An act for enabling spiritual persons to exchange the parsonage or glebe houses or glebe lands belonging to their benefices, for others of greater value or more conveniently situated for their residence and occupation; and for annexing such houses and lands so taken in exchange, to such benefices as parsonage or glebe houses and glebe lands, and for purchasing and annexing lands to become glebe in certain cases, and for other purposes - - - cccl

56 Geo. 3. c. 52. An act to amend and render more effectual an act passed in the last session of parliament for enabling spiritual persons to exchange their parsonage houses or glebe lands and for other purposes therein mentioned - - - ccclviii

1 Geo. 4. c. 119. An act for the relief of insolvent debtors in England to continue in force until the first day of June, one thousand eight hundred and twenty-five - - - ccclx

1 & 2 Geo. 4. c. 93. An act for vesting all estates and property occupied by or for the naval

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 23 Eliz. c. 10. An act for the preservation of pheas-
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 1 Eliz. c. 17. An act for preservation of spawn and
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 9 Hen. 3. c. 17. Holding pleas of the crown - - -
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-

ADDENDA.

FIRST PART, (OR, COPYHOLDER).

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- 1 n. 1, add—But Bracton and others tell us, that it is derived either from the French *manoir*, or from the Latin *manendo*, as the usual residence of the owner on his land. *Vide* Co. Litt. 58. n. lb. n. b.
- 9 n. 20, after 1 And. 257, add—*Prior of Bath's* case, 4 Leo. 199.
- .. n. 21, at the end, after *Vide* also, add—*Smith v Smith*, 2 Price 104. *Steel v. Prickett*, 2 Stark. 466. *Curson v. Lomax*, 5 Esp. 60.
- 11 n. 25, add—Sav. 21 ca. 52.
- .. n. 30, after Het. 14, add—And see *Prior of Bath's* case, 4 Leo. 199.
- 13 n. 33, after Co. Tr. 69, add—*Ib.* 8. 42, Tr. 97-8; and at the end of the note, add—but see *post*, 118 n. 46.
- 19 n. 43, after Co. Litt. 58. b. n. 7. add—4 Leo. 199. Ca. 319.
- .. n. 45, after 1 Sid. 284, add—But see Sav. 21.
- 22 n. 50, add—*Steel v. Prickett*, 2 Stark. 464, 470.
- 23 n. 58, add—*Cane v. Baldwin*, 1 Stark. 65.
- 35 n. 82, add—*Morewood v. Wood*, 14 East 329, n. *Weeks v. Sparke*, 1 Mau. & Selw. 679.
- 37 n. 94, add—*Pain v. Herbert*, cited 2 Keb. 158.
- 39 n. 96, add—See note, as to the non-application of the 5th sect. of the stat. of distributions to lands of Borough English, or Gavelkind tenure, *post*, 55.
- 55 n. 6, add—As the 5th sect. of the stat. of distributions, 22 & 23 Car. 2. c. 10, is silent in respect to lands descending according to the custom of Borough English, or Gavelkind, a younger child taking under any such peculiar path of descent, is not compellable to bring a copyhold estate so descending into hotch pot, *Lutwyck v. Lutwyck*, Ca. Temp. Talb. 276. And see the case of *Ch. Just. Pratt. Fitzg. 284. Rob. Gav. (by Wilson) 403.*
- 60 n. 25, after 4 Co. 23. n. add—*Roswell's* case, Dy. 264. a.
- .. n. 26, add—*Paulter v. Cornhill*, Cro. Eliz. 361.
- 63 n. 37, after Kit. 202, add—*Cole & Waller*, 1 Leo. 328.

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- 68 n. 47, add---*Doe & Dauncey*, 7 Taunt. 674.
- 72 n. 52, add---*Biscoe v. Wilks*, 3 Meriv. 456.
- 74 n. 56, add---but see *Doe & Dauncey*, 7 Taunt. 674.
- .. n. 57, add---*Doe & Dauncey*, *sup.*
- .. l. 17, after *coram non judice*, add as a note---This principle cognised in *Scott & Kettlewell*, 19 Ves. 335, citing *Searle v. Ner*, In Canc. 15 Apr. 1809.
- 86 n. 82, after 2 Watk. 89. add---*Wheeler's case*, 4 Leo. 240.
- 90 n. 99, add---Rob. Gav. b. 2. c. 2. p. 172-3.
- 100 n. 134, add---Assignees of the reversion of part of the premises are within this statute, *Twynam v. Pickard*, 2 & Ald. 105.
- ... n. 135, after 2 Watk. 191, add---Evans' Stat. 1 Vol. p. 392.
- 101 n. 138, add---but the Court of Exchequer, in *re Janaway*, 7 679, refused to compel the infant heir of a vendor, who had for a valuable consideration and received the purchase-money to surrender to the purchaser under the stat. of Anne. A 1 Jac. & Walk. 643. in *ex parte Currie*.
- 104 n. 154, add---Customary estates are not within these statutes. 268. 3 Bos. & Pull. 378.
- 115 n. 32, add---but such grants, I apprehend, would not be good against the dower of the wife of the lord, Dy. 251. a. 114, n. 27.
- ... n. 33, add---*Roe & Loveless*, 2 Barn. & Ald. 456.
- 120 n. 52, add---*Ven & Howell*, 1 Roll. Abr. 511.
- 125 n. 71, add---and see Sty. 41. in *The King & Holland*.
- ... n. 72, after 1 Watk. 31, add---*Ranshaw v. Robottom*, 43 1 Canc. Duke's Char. Uses, by Bridgm. 135.
- 142 n. 22, add---when a copyhold is sold under a decree in equity Court will compel a surrender in person, if it can be conveniently done, *Noel v. Weston*, 6 Madd. 50.
- 146 l. 8, add---it is however to be observed, that in *Compton & son*, the wife surrendered, as a *feme sole*; so that, by analogy the case of a fine of a married woman acting as a *feme sole* surrender might very consistently be held to conclude the husband and her heirs, and to be avoidable only by the husband.---also, as a note---But I apprehend, that as a fine by a

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- woman alone, disclosing the fact of coverture, is void, (Cru. 111.), so also would a surrender by the wife alone in which she was stated to be under coverture.
- 150 n. 53, after *Nelson & Remmington's* case, add---*Anderson v. Haywood*, 9 Leo. 221, 4 ib. 30.
- 163 n. 102. add---Extrinsic evidence is admissible to explain a will, where the ambiguity is raised by extrinsic circumstances, 4 Dow. P. C. 93.
- 183 n. 122, add---Plowd 191. Shep. Touch. 99. *Doe & Greathed*, 8 East 103. *Goodtitle & Paul*, 2 Burr. 1089, 1093. 1 Sir W. Bl. 255. 15 East 309. 5 Taunt. 321.
- 245 n. 183, add---*Rose v. Tillier*, 2 Ch. Rep. 214. 2 Ch. Ca. 94.
- 249 n. 201, add---but see *Brown v. Ramsden*, 2 Moore, (C. P.) 612.
- 257 n. 216, at the end, add---*Allen v. Arme*, 1 Vern. 365.
- 258 n. 222, add---the language of the report of the above case of *Kite & Queinton* on the present point is as follows, "if the truth of the case was, that the surrender conditional was presented, and the steward in entering thereof omitted the condition, yet upon good proof thereof, the surrender should not be avoided, but the roll should be amended; for the roll should not conclude in such case the party either to plead or give in evidence the truth of the matter." *Vide* also 1 Roll. Abr. 501. *post*, 297.
- 262 n. 236, add---But see *Prebble v. Boghurst*, 1 Swanst. 581.
- 266 n. 245, add---and see 1 Jac. & Walk. 620, in *Wilson v. Allen*.
- 268 n. 249, add---in the late case of *Doe d. Nethervote v. Bartle*, 5 Barnew. & Ald. 492, it was decided that the act supplied a formal surrender only, and not the surrender of a feme covert requiring her to be separately examined as to her free consent.
- 302 n. 325, add---2 P. W. 258-9.
- 303 n. 331, add---and see 1 Jac. & Walk. 570, in *Jervoise v. Duke of Northumberland*.
- 307 n. 337, add---*Brooke v. Gurney*, cited 5 Ves. 559, in *Hills & Downton*.
- 312 n. 356, immediately previous to the reference to the cases of *Reeves v. Winnington*, &c. add---So a devise "of the whole remainder of the said lands, &c." *Norton v. Ladd*, 1 Lutw. 755.
- 317 l. 7, after (370) add---And the rule in freehold cases that an estate may arise by implication in favour of the heir, but not of a

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- stranger, is equally applicable to copyholds. *Faulkner v. Paulkner*, 1 Vern. 22. post, 479, n.
- 323 n. 397, after *Acherley v. Vernon*, add---cites *Woodier v. Greenhill*. And see *Greenhill v. Greenhill*, Gilb. Eq. Rep. 77. 2 Vern.
- 328 n. 413, add---*Preston & Holmes*, Sty. 148. 1 Roll. Ab. Disc. 1. pl. 2; but this is only when particular estate carved out in favour of strangers; for under a devise to tenant for a limited estate, with a remainder over, the heir will take by purchase. *Watk. on Desc.* 177, 272. Bro. Devise, 4, 4
- 348 n. 37, after *ante*, p. 153, add---4 Burr. 1952-8; but see 1291. 1 Sir W. Bl. 605.
- 353 n. 57, add---an appointee, I apprehend is a person in remainder under this rule. See *Lord Kensington v. Mansel*, 13 Ves. 2. But it has been said that the admittance of a tenant for life does not create a *seizin* in the remainder-man; with reference to possession necessary to support real actions, *Per. M. R. in Dawson v. Harrington*, 1 Jac. and Walk. 558.
- 362 n. 84, add---reported 4 Madd. 483.
- 370 n. 121, add---But *qu.* whether the tenant would not have a right of suing for the land either in the Lord's Court, as freehold, or in the courts of Common Law, as freehold. See 685. tit. ANCIENT DEMESNE.
- 372 n. 6, to Cary 9, add---*Egerton's Case*.
- 388 n. 25, add---*Gerard's case* is thus reported in Godb. "It was in the Chancery in the *Lord Gerard's case* against his Copyholders [Copyholders] of Audley in the County of Stafford, that by ancient rolls of court it appeareth that the fines of the copyholds had been uncertain, from the time of King Henry the first to the 19 H. 6; and from thence to this day had been uncertain except twenty or thirty; that those few ancient rolls did not show the custom for certainty of fine. But if from 19 H. 6, to the present time certain except a few, and so [no] uncertain rolls before, they shall be intended to have escaped, and should not destroy the custom for certain fines."
- 406 n. 86, add---*Skin.* 250.
- ... n. 87, after *Willow's case*, add---S. C. (called *Stallon v. B.*) Co. Litt. 60, a.
- 440 l. 2, after the word made, add (as a note)---In a very recent case

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the Common Pleas (*Garland v. Jekyll* and another, executors of Sir C. Bunbury. Sitt. after Hil. Term, 1822), the beasts claimed by the lord for heriots (which were part of a valuable stud of race horses) were sold, and the right tried in an action of debt: a verdict was given for the plaintiff for the value of the horses held to have been selected by the lord's agent for his heriots, the number to depend on the result of a case to be argued before the court upon legal points, involving the principle of a multiplication of heriots, by reason of the estate being now held in undivided shares; and this important question is still *sub judice*.

440 n. 131, add---In the above case of *Creswell & Coke*, Mounson, J. was of opinion that the plaintiff should recover the whole 200 marks (the value of the 30 horses) although defrauded of one heriot only: But Dyer, C. J. and Manwood held that the plaintiff should recover the value of one of the horses. Barham, Serjeant, contended that the fraud extended to all the horses, as the plaintiff was to have the choice of all, "which he would take for the best," and that by the fraudulent gift he was defrauded of his election. The report of this case concludes, "But Dyer and Mounson said to the Serjeant, set a price upon any of the 30 horses, as the best horse in your election, and demand the value of that horse as forfeit by the statute, and then your election is saved to you."

468 n. 42, add---A license to demise taken by the father at the time of the purchase in the name of a child, would rebut the presumption of an advancement. *Swift d. Farr v. Davis*, ante. And if by the custom the first taker could dispose of the estate, as against the other lives, a lease by the father pursuant to the license would divest the legal estate of the child. lb.

470 l. 5, add as a note---*Vide Jervoise v. Duke of Northumberland*, 1 Jac. and Walk. 570.

477 n. 6, after *Doe & Wilson*, add---and see *East v. Harding*, Cro. Eliz. 499.

485 n. 24, add---*Simpson v. Telwright*, 2 Lutw. 1247.

489 n. 31, add---where the mines had been worked for 8 years, the court would not grant an injunction to restrain the working

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without first directing an issue--*Field v. Beaumont*,
204.

495 n. 7, to *Peachy v. Duke of Somerset*, add--1 Str. 453;
contra, *Shelley v. Mason*, 5 Car. 1, cited 1 Str. 449.

592 I. S. add--And so, of course, is the fine for a license when there is no special custom to compel the local authorities to issue such licenses on certain fixed terms.

554 n. 82, add---And see Append. 108 n. 119.

574, to the authorities referred to in the text, add---*Banbu*
claim, 1809, 2 Sel. N. P. 684.

575 n. 139, add—*Morewood v. Wood*, 14 East 329 n. *Weeks*
1 Man. & Sel. 679.—And at the end of the note add
a general right may be proved by reputation, yet a
right cannot, *Outram v. Morewood*, 5 T. R. 123. *Weeks*
Morewood v. Wood, *sup.*

599 n. 17, add---But equity will not compel the lord to admit who does not shew a colorable title, and that there is no reasonable prospect of succeeding at law. *Widdowson v. Harrington*, 1 Jac. & Walk. 543.

604 to the cases of refusal of interposition in equity, and
has refused to compel a trustee to surrender when
objected to deal with the *cestui que trust*. *Goodwin v. Lewis*,
Lex Cust. 325.

615 to the observation on the distinction between merger
guishment, add---an equitable estate tail is not merged
cession of the legal fee, *Merest v. James*, 6 Madd. 11

617, last line but one, add (as a note,) after the word copy
 person admitted and recognised as the lord's tenant,
 of receiving a grant of the freehold, although he may
 a perfect and indefeasible title. *Wilson v. Allen*,
 Walk. 611. And an heir may accept an enfranchisement
 admission. *Ib.*

SECOND AND THIRD PARTS.

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- 712 n. 87, add—But see Exemptions established by the stat. of Marl.
52 H. 3. c. 9.
- 721 n. 120, add—*Sed vide post*, 724.
- 731 n. 169, add—sometimes by custom a *venditioni exponas* is awarded,
after the third attachment, for sale of goods distrained on non-
appearance. Scroggs.
- 825 n. 106, add—a steward of court leet and court baron is punish-
able for encouraging suits; and for over-charges. See stat.
Westm. 1. c. 33. Append. 494-5.
- 863 n. 221, add—But in pleading the custom the by-law must be set
forth. *Gerrish v. Rodman*, 3 Wils. 155, 161.
- 868, add to the last note—that a constable not *idoneus* may be dis-
charged by the leet or court of B. R.

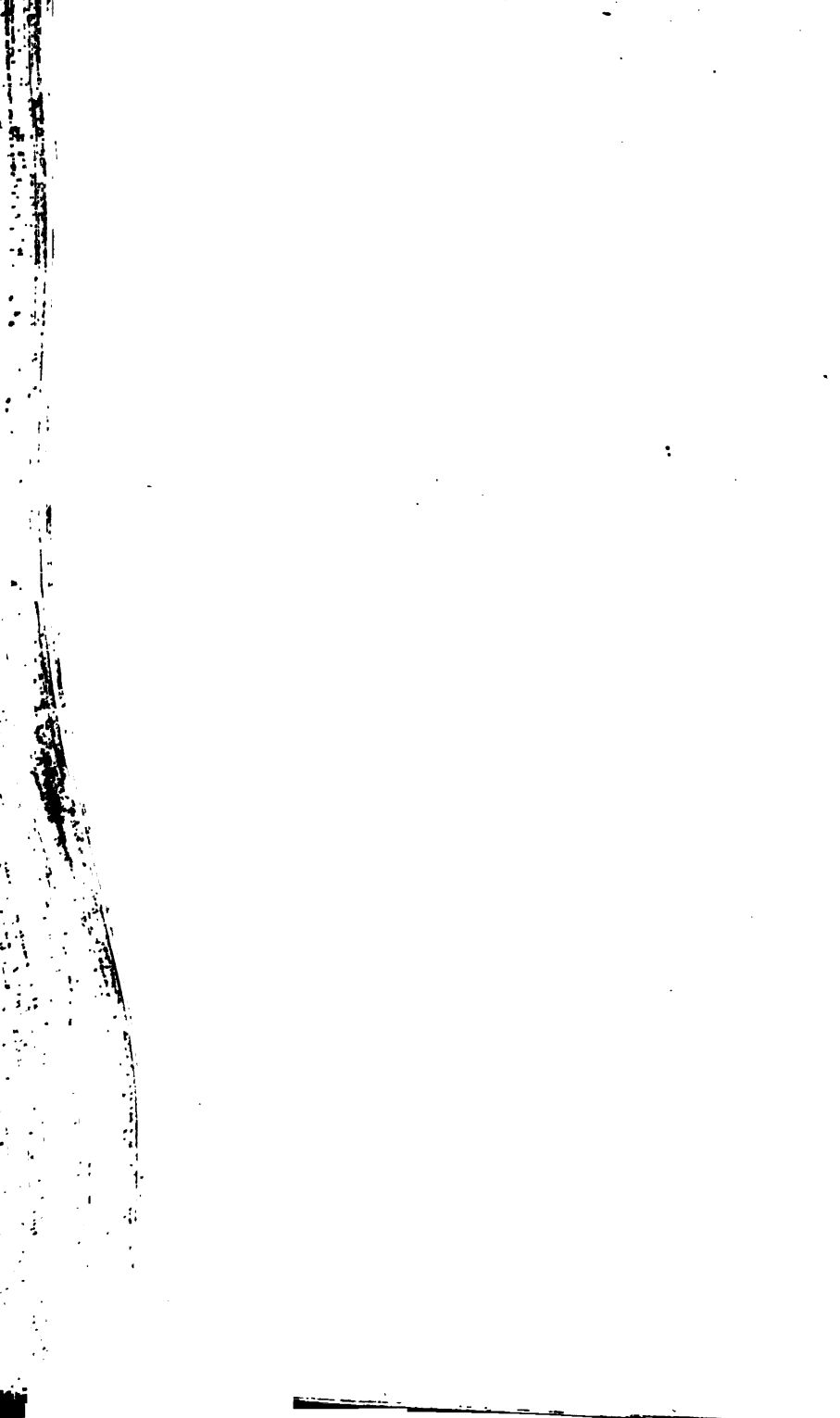
FINIS.

CORRIGENDA.

- Page*
- 61 n. 32, in the 4th line from the bottom, for 'is no
legatees,' read 'is extended to legatees.'
- 77 n. 66, for '2 H. Bl.,' read '1 H. Bl.'
- 257 n. 215, for 'Kitch. 121.' read 'Kitch. 161.'
- 285 n. 298, at the end, for 'additional surrender,' read
surrender.'
- 327 n. 409, (*Greenhill v. Greenhill*, 2 Vern.) for '670,' r
466 L. 6, after the word 'generally,' add, 'not having any
property;' and l. 8, for 'him,' read 'his devisee.'
- 794 L. 10, for 'great,' read 'close.'
- 518 pl. 36, for '(addenda) 478-9, 575 n.,' read '(addend
478-9.'
- 592 L. 15, for 'pl. (c),' read 'pl. (cxiii).'

And see Errata at the end of Table of Cases, 1st. Vo









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